



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNL-MT, MNDCT, DRI, LRE, OLC
Landlord: OPL, MNDL-S, FFL

Introduction

The Tenant filed their Application for Dispute Resolution on October 5, 2022 seeking

- a) an order to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice"),
- b) more time in which to make that Application.
- c) to limit the Landlord's right of entry,
- d) to dispute a rent increase,
- e) compensation for monetary loss or other money owed
- f) the Landlord's compliance with the law/tenancy agreement.

On October 6, 2022 the Landlord filed an Application for an Order of Possession based on the same Two-Month Notice, compensation for damage in the rental unit, and reimbursement of the Application filing fee. The Tenant's Application was already in place and the Residential Tenancy Branch joined the Landlord's Application to that of the Tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on February 17, 2023. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the other's Notice of Dispute Resolution Proceeding document and prepared documentary evidence.

Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on Two-Month Notice issued by the Landlord. Therefore, I dismiss one of the Tenant's other grounds for dispute resolution, with leave to reapply: suspension/set conditions on the Landlord's right to enter the rental unit, listed as (c) above. The other issues listed above are directly related to the Tenant's effort to cancel the Two-Month Notice.

Similarly, I dismiss the Landlord's claim for compensation due to damage in the rental unit, with leave to reapply. That issue is unrelated to the core issue of a notice to end tenancy.

Issues to be Decided

Is the Tenant allowed more time in which to make their Application, pursuant to s. 66 of the *Act*?

Is the Tenant entitled to a cancellation of the Two-Month Notice?

If the Tenant is not successful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to compensation from a rent increase?

Is the Landlord obligated to comply with the legislation and/or the tenancy agreement?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant in their evidence provided a copy of the tenancy agreement that they signed with the previous landlord for the tenancy starting on November 1, 2020. This shows the rent amount of \$1,200 payable on the first day of each month. The Tenant also paid a security deposit of \$600 as shown on page 3 of that agreement.

The Landlord named as the Respondent by the Tenant in their Application testified in the hearing that they bought the house in February 2022. They took possession of the rental unit property on August 1, 2022.

Both parties in their evidence provided a copy of the Two-Month Notice, signed by the previous landlord on March 14, 2022. This set the end-of-tenancy date at July 30, 2022. The Tenant confirmed in the hearing that they received the entire 4-page document.

On page 2 of the document, the previous landlord indicated that all the conditions of the rental unit property purchase were completed, and the new owner – here, the Landlord – “intended in good faith to occupy the rental unit.” The Landlord’s name appears in the required space. There was no contract for sale, or purchaser’s written request for vacancy included with the Two-Month Notice.

In the hearing, the Tenant presented that the previous landlord was assisting them to look for a new living arrangement immediately after they served the Two-Month Notice. This was during the time nearing the end-of-tenancy date set for July 30, 2022. Their previous landlord asked the Landlord here if the Tenant could stay longer, and the Landlord here stated that the Tenant could stay if they were paying \$1,700 per month. The Tenant responded to that to say they could not pay that amount per month.

From August 2022, the Tenant paid \$1,400 per month, while continuing to look for new living arrangements. The Tenant continued to pay \$1,400 per month right to February 2023, the month in which I heard this matter. As stated by the Tenant in the hearing, they felt they had to agree to this in order to remain.

The Tenant applied for dispute resolution on October 5, 2022. This is past the 15-day timeline that is set on the first page of the Two-Month Notice where a tenant may dispute it. The Tenant presented that they don’t read English and were not aware of the information on the document. They had help from a contact at the beginning of August. They had no other resources during this time.

In the hearing, the Landlord confirmed their need for possession of the rental unit. They recounted how the Tenant requested accommodation for 1 or 2 months upon receiving the

Two-Month Notice. They agreed to help the Tenant for this time, with the Tenant agreeing to pay extra rent amounts for the interim period. The Landlord confirmed they received \$1,400 per month rent from August 2022 through to February 2023. The Tenant presented two written receipts showing they paid \$1,400 for each of those months.

Analysis

The *Act* s. 49(3) states that a landlord may end a tenancy by giving a Two-Month Notice “if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Following this, s. 49(8) states that within 15 days of receiving a notice a tenant may dispute that notice. Where a tenant does not make the application within 15 days, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

With respect to timelines for a tenant served an end-of-tenancy notice and their right to challenge that via the dispute resolution proceeding, the *Act* s. 66 sets out that a time limit *may* be extended in exceptional circumstances. The *Act* s. 66(3) also sets out: “The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.”

The Residential Policy Guideline 36 ‘Extending a Time Period’ gives a statement of the policy intent of the legislation. Specific to the present scenario, the guideline sets out:

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter *even where the tenancy can establish grounds that there were exceptional circumstances*. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

In these circumstances, the *Act* is clear that there is no consideration of exceptional circumstances. The Tenant applied to dispute the Two-Month Notice on October 5, 2022. That was past the end-of-tenancy date on that Two-Month Notice, July 30, 2022.

As per the *Act*, there is no extension of time in these circumstances. The Tenant did not apply within the 15-day timeline; therefore, I find the Tenant is conclusively presumed as per s. 49(9)

to have accepted that the tenancy ended on July 30, 2022. This is a strict application of the law as it stands in the *Act* in these circumstances.

I dismiss the Tenant's Application. In line with s. 55, I grant an order of possession to the Landlord, effective March 31, 2023, at 1:00pm.

The Tenant is entitled to receive compensation in these circumstances. That is, as per s. 51(1) of the *Act*, one-month's rent payable under the tenancy agreement. That amount, as per the original tenancy agreement, is \$1,200. I authorize the Tenant to withhold that amount for the final month of this tenancy.

Additionally, the Landlord must return the security deposit to the Tenant at the end of the tenancy. I draw the parties attention to Division 5 of the *Act* which the parties are obligated to follow at the end of the tenancy. The Landlord has no right to retain the security deposit without the Tenant's written consent, or a separate application for dispute resolution where an arbitrator may grant the Landlord authorization to retain an amount from the security deposit that they apply for.

The Tenant disputed the rent increase that they were paying. I find this was unilaterally implemented without the Tenant's consent in these circumstances. The Landlord must repay additional rent the Tenant paid to them for the period in question. The *Act* is very strict on this point, as per s. 41: a landlord must not increase rent except in accordance with Part 3. I find the Landlord here took advantage of the situation, borne from the Tenant having no option for other living arrangements and a disadvantage with limited language capability. I also consider the Tenant's point, as stated in the hearing, that the Landlord wanted to charge \$1,700.

I find the Tenant paid an extra amount for rent, as confirmed by the Landlord in the hearing. As per s. s. 43(5), this was an illegal rent increase, and the Tenant must recover the increase they paid. This was seven months in duration; therefore, I award the Tenant \$1,400 in compensation for the money owed. I provide a monetary order to the Tenant for this amount, as a surety to them that they can recover the money they paid for an illegal rent increase. The Landlord must not retain any part of this amount for the final month's rent, or other money they feel they are owed.

My granting of the Order of Possession to the Landlord was arbitrary, due to the Tenant's late Application. By the discretion conferred to me by s. 72, I grant no reimbursement of the Landlord's Application fee, with consideration of the illegal extra rent amounts they collected from the Tenant over the last seven months.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for a cancellation of the Two-Month Notice. Under s. 55(1) of the *Act*, I grant an Order of Possession effective **March 31, 2023**. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

In line with the Two-Month Notice, as per s. 51, I grant the Tenant March 2023 (*i.e.*, the final month of this tenancy) rent-free.

Pursuant to s. 43 of the *Act*, I grant the Tenant a Monetary Order for \$1,400. I provide the Tenant with this Monetary Order in the above terms and the Tenant must serve this Order to the Landlord. Should the Landlord fail to comply with this Order, the Tenant may file this Monetary Order in the Small Claims Division of the Provincial Court where it may be enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 26, 2023

Residential Tenancy Branch