



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing dealt with the Tenants' application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated December 9, 2022 (the "One Month Notice") pursuant to section 47;
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The Tenants attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlords did not attend this hearing. I left the teleconference hearing connection unlocked until 11:10 am in order to enable the Landlords to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Tenants and I were the only ones who had called into the hearing.

I informed the Tenants that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenants confirmed that they gave two packages with the notice of dispute resolution proceeding documents and the Tenants' documentary evidence (collectively,

the Tenants' Dispute Resolution Documents) to the Landlords in person at the Landlords' residence three days after receiving the notice of dispute resolution proceeding documents from the Residential Tenancy Branch (the "RTB"). The Tenants confirmed that they handed the packages to one of the Landlords, and that the Landlords are spouses. The Tenants confirmed that they were both there to serve the documents.

Based on the Tenants' testimony under oath, I find the Landlords were served with the Tenants' Dispute Resolution Documents in accordance with sections 88 and 89 of the Act.

The Tenants explained that they had agreed with the Landlords to move out of the rental unit by the end of April 2023, and did not need this hearing anymore. However, the Tenants were informed by the RTB that the Landlords still wanted to proceed with this hearing. RTB records indicate the Landlords had confirmed on April 20, 2023 that this hearing was still required.

Having found the Landlords to be duly served with the Tenant's Dispute Resolution Documents, including notice of this hearing, I directed the hearing to proceed in the Landlords' absence.

Preliminary Matter – Severing the Tenants' Unrelated Claim

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis underlined)

In the Tenants' application, the Tenants have applied to cancel a notice to end tenancy and have included other claims. I find the Tenants' claim for an order that the Landlords comply with the Act, regulations, or tenancy agreement is unrelated to the issue of the One Month Notice. Pursuant to Rule 6.2 of the Rules of Procedure, I sever and dismiss the Tenants' unrelated claim with leave to re-apply.

Preliminary Matter – Form and Content of Notice to End Tenancy

I have reviewed a copy of the One Month Notice submitted into evidence by the Tenants. I find the One Month Notice names an individual JS as the landlord and does not mention either of the Landlords. The Tenants testified that they signed a tenancy agreement with the Landlords, not JS. The One Month Notice also contains JS's typed name in the signature box, and is not signed or digitally signed by JS.

Section 52 of the Act states that in order to be effective, a notice to end tenancy must, among other requirements, be signed by the landlord or the tenant giving the notice. I find there is insufficient evidence to prove that JS is a landlord with authority to issue the One Month Notice. I am also unable to conclude that the One Month Notice has been signed by the person giving the notice as required under section 52 of the Act.

Section 68 of the Act allows an arbitrator to amend a notice to end tenancy that does not comply with section 52 of the Act, if the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. However, the Landlords did not attend this hearing to explain or provide any evidence regarding the One Month Notice.

Under these circumstances, I am unable to conclude that the One Month Notice is a valid and effective notice to end tenancy under the Act. Accordingly, I order that the One Month Notice be cancelled and of no force or effect.

As the One Month Notice has been set aside on this application, I grant the Tenants reimbursement of their filing fee under section 72(1) of the Act.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The Tenants' claim for the Landlords to comply with the Act, the regulations, and the tenancy agreement is severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

The Tenants' claim for reimbursement of the filing fee is granted. Pursuant to section 72(1) of the Act, I grant the Tenants a Monetary Order in the amount of **\$100.00**. This Order may be served on the Landlords, filed in the Small Claims Division of the Provincial Court of British Columbia, and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 25, 2023

Residential Tenancy Branch