



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for landlord's use of property pursuant to section 55;
- an order of possession for cause pursuant to section 55;
- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- more time to make an application to cancel the landlord's Two Month Notice pursuant to section 66;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the respective applications and evidence submissions on file.

During the hearing, the landlord stated that although the tenant had been served multiple 10 Day Notices for Unpaid Rent, the landlord acknowledged the outstanding

rent was paid in each instance within 5 days of the 10 Day Notice being received by the tenant. Therefore, the focus of this hearing was the Two Month Notice and the One Month Notice.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the Two Month Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the tenant's request for more time to make an application to cancel the Two Month Notice be granted? Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the landlord entitled to an order of possession based upon the One Month Notice to End Tenancy for Cause (the One Month Notice)?

Is either party entitled to recover the filing fee?

Background and Evidence

The tenancy originally began in October 2021 after the landlord purchased this property from the tenant. The tenant moved into the two bedroom basement suite after the sale and the landlord occupied the upper two floors. On June 1, 2022 the parties entered into a new lease agreement which stipulated a monthly rent of \$2500.00 payable on the first of each month. The tenant paid a security deposit of \$1000.00 at the start of the tenancy.

The landlord testified that on November 16, 2022 he served the tenant with the Two Month Notice by placing a copy in the mailbox. The landlord submitted a witnessed proof of service form in support of service. The landlord also submitted text message correspondence of this same date, by which he advised the tenant that the Two Month Notice had been placed in the mailbox. The landlord further submitted a picture of the Two Month Notice and the envelope in which it was placed as well CCTV footage from the front door camera showing the tenant collecting the envelope. The landlord testified that as per the CCTV footage, the tenant collected the mail on December 10, 2022. The landlord testified that the tenant did not check the mail at all until this date from the time the Two Month Notice was served. The landlord also testified that the tenant did not at any point advise him that he had not received the Two Month Notice even after the tenant was advised it had been served by text message on November 16, 2022.

The tenant's application to cancel the Two Month Notice was not filed until December 19, 2022. The tenant testified that he does not know when or if he received the Two Month Notice. The tenant testified that he does not check his mail regularly. The tenant submits that his application was filed as soon as he became aware of the Two Month Notice. The tenant further argues that the picture of the envelope submitted by the landlord does not have contain any information on who the mail was from.

Analysis

Pursuant to section 66 of the Act, the director may extend a time limit established by this Act only in exceptional circumstances.

I find the tenant's reasoning that he does not check his mail regularly or that the envelope did not contain the sender's information is not an exceptional circumstance. I find it is the tenant's responsibility to check his mail on a regular basis and in this instance, he had been specifically advised by the landlord that a Two Month Notice had been placed in the mailbox. The tenant choose to ignore this and not retrieve the mail until December 10, 2022.

The tenant's request to extend a time limit to file an application to dispute the Two Month Notice is dismissed.

Based upon the above evidence, I find the tenant to be deemed served with the Two Month Notice on November 19, 2022, three days after it was left in the mailbox.

Pursuant to section 49 of the *Act*, the tenant may make a dispute application within fifteen days of receiving the Two Month Notice. As the tenant was deemed served the Two Month Notice on November 19, 2022, the tenant's application should have been filed on or before December 5, 2022. The tenant's application was not filed until December 19, 2022.

In accordance with section 49(9) of the *Act*, as the tenant failed to make this application within fifteen days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Two Month Notice, February 1, 2023.

The tenant's application to cancel the Two Month Notice is dismissed. I find the notice complies with the form and content requirements of section 52 of the *Act* and the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

As this tenancy has ended pursuant to the Two Month Notice, I make no finding on the merits of the One Month Notice. I note that the tenant also failed to file any application to dispute the One Month Notice, so he likely would have been conclusively presumed to have accepted the end of the tenancy based on this Notice as well.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant. The landlord may deduct this amount from the tenant's security deposit.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

Conclusion

As the effective date of the Two Month Notice has passed, I grant an Order of Possession to the landlord effective **April 30, 2023**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 21, 2023

Residential Tenancy Branch