



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, CNL, AAT, LRE (x2), LAT, RR, RP, OLC (x2), FFT (x3)

Introduction

This hearing was scheduled pursuant to five applications for dispute resolution made by the Tenants, pursuant the Residential Tenancy Act (the Act).

In the first application, made on October 14, 2023, the Tenants applied for:

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 13, 2023 (the One Month Notice); and
- an order granting recovery of the filing fee.

In the second application, made on September 2, 2023, the Tenants applied for:

- an order reducing rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs to the unit, site, or property; and
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulations), and/or the tenancy agreement.

In the third application ,made on September 4, 2023, the Tenants applied for:

- an order that the Landlord allow access to the rental unit for the Tenants and their guests;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

In the fourth application, made on September 27, 2023, the Tenants applied for:

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated September 26, 2023 (the Two Month Notice);
- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order authorizing the Tenants to change the locks to the rental unit;
- an order that the Landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- an order granting recover of the filing fee.

In the fifth application, made on November 3, 2023, the Tenants applied for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2023 (the 10 Day Notice);
- an order granting recovery of the filing fee.

The Tenant JG attended the hearing and was accompanied by AA, agent for the Tenants' legal counsel. AA advised that his retainer was limited to the request for an adjournment, addressed below. The Landlord was represented at the hearing by TG, legal counsel. Witnesses for the Landlord included YLS, the owner of the rental unit, MW, an interpreter, ET, YFX, and RYL. All those giving testimony provided a solemn affirmation at the beginning of the hearing.

During the hearing, it was noted that the tenancy agreement refers only to a corporate Landlord, whereas some of the applications refer to individuals. Pursuant to section 64(3) of the Act, I amend the Tenants' applications to reflect the name of the corporate Landlord referenced in the tenancy agreement submitted.

Preliminary Matter – Adjournment. At the beginning of the hearing, AA requested an adjournment. AA stated that legal counsel for the Tenants is appearing before the Court of Appeal and cannot attend the hearing.

The Landlord opposed an adjournment. TG submitted that counsel for the Tenants would likely have known about his schedule to appear in the Court of Appeal in advance and could have arranged for alternate counsel to attend. TG also submitted that the Landlord requires an answer with respect to the status of the Two Month Notice as it will impact their potential obligation to pay compensation or do what was stated in the Two Month Notice as the reason for ending the tenancy.

After considering the submissions of the parties, I find that an adjournment is not appropriate in these circumstances. As noted by TG, the Tenants could have arranged for alternate counsel. In addition, I agree that the issue of potential compensation is significant, and an adjournment would complicate future proceedings. Finally, JG was in attendance and was in the best position to provide evidence relating to the Two Month Notice.

With respect to service of the Notices of Dispute Resolution Proceeding packages and other evidence, JG testified that these were served on the Landlord by email. TG acknowledged receipt on behalf of the Landlord.

On behalf of the Landlord, TG advised that the documentary evidence in response to the Tenants' applications was served on the Tenants by email. JG acknowledged receipt on November 26, 2023, but submitted that they were served late, contrary to the Rules of Procedure. Having been received on November 26, 2023, I find that the evidence was received by the Tenants more than seven days before the hearing, in accordance with Rule of Procedure 3.15.

No further issues with respect to service and receipt of the above documents were raised during the hearing. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

1. Did the Tenants agree to the Landlord's purported withdrawal of the Two Month Notice?
2. Are the Tenants entitled to recover the filing fees paid?

Background and Evidence

The parties acknowledged that the Tenants vacated the rental unit on November 30, 2023. However, the parties sought a decision with respect to the Landlord's withdrawal of the Two Month Notice and the Tenants' acceptance of the withdrawal. The Landlord's position is that the Tenants accepted the Landlord's withdrawal of the Two Month Notice and that the Tenant is no longer entitled to compensation under section 51 of the Act (although there is no application for compensation before me in this proceeding). The Tenants' position is that they did not accept the Landlord's withdrawal of the Two Month Notice.

By way of background, the parties agreed that the Two Month Notice was received by the Tenants on September 26, 2023. The effective date of the Two Month Notice is stated to be November 30, 2023, and the parties agreed the Tenants vacated the rental unit on that date. They disagree with respect to whether or not the Tenants accepted the Landlord's withdrawal of the Two Month Notice, which would impact the Tenants' right to apply for compensation under section 51 of the Act.

On behalf of the Landlord, ET testified that Tenants disputed the Two Month Notice on September 27, 2023. ET testified that the Tenants were advised of the Landlord's intention to withdraw the Two Month Notice by email on September 30, 2023. A copy of the email was submitted as evidence. ET testified that the Tenants responded on the same date, advising that they intended to proceed with the dispute.

In addition, YFX testified that he had two conversations with the Tenants about the Landlord's desire to sell the rental unit in October 2023. YFX testified that the Tenants indicated a desire and an intention to stay in the rental unit. JG testified that the conversation happened in early September.

TG submitted that written confirmation of the Tenants' acceptance of the withdrawal is not necessary, and that agreement can be implied through the Tenants' conduct. TG submitted that the Tenants' acceptance of the Landlord's withdrawal was implied by the Tenants' stated intention to proceed with the dispute resolution hearing. Or, as stated in an email from ET to the Tenants, dated October 30, 2023:

You have not withdrawn your dispute resolution application to set aside the two month notice, and all the way until October 27 it is your consistent position that you also believe the two month notice should be cancelled, given your position on the notice of dispute resolution. You cannot simultaneously claim the two month notice is effective now while simultaneously disputing it before the residential tenancy branch

TG also submitted that the Tenants' decision to accept the Two Month Notice and vacate the rental unit at the end of October 2023 was detrimental to the Landlord's interests and would impact the decision to occupy the rental unit.

In response to the Landlord's evidence and submissions, JG confirmed that the Tenants advised the Landlord of their intention to accept the Two Month Notice and vacate the rental unit in a letter dated October 27, 2023, which was sent to ET on October 28, 2023. ET responded a short time later with: "Good news." A copy of the type-written letter was submitted into evidence. JG testified that his dispute of the Two Month Notice was made to preserve the Tenants' rights, but that after other notices were issued it became clear that the tenancy needed to end. JG testified that the Tenants expressly did not agree to the Landlord's purported withdrawal of the Two Month Notice. An email from the JG to ET, dated October 31, 2023, stated:

To be perfectly clear, I did not and do not implicitly consent to the withdrawal of your notice to end tenancy, and I am expressly not consenting to the landlord withdrawing their notice to me now.

On behalf of the Tenants, AA submitted that merely disputing the Two Month Notice was not sufficient to imply agreement with the Landlord's withdrawal of the Two Month Notice. AA submitted that preservation of the Tenants' rights under the Act is a legitimate objective and that they were entitled to subsequently accept the Two Month Notice and vacate the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

The primary issue before me is whether or not the Landlord's withdrawal of the Two Month Notice was accepted by the Tenants. This may have implications with respect to the Tenants' entitlement to compensation under section 51 of the Act.

Policy Guideline #11 states:

A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant (see section D below). It is recommended that withdrawal of a notice to end tenancy be documented in writing and signed by both the landlord and the tenant.

The Landlord submits that the Tenants' agreement with the Landlord's withdrawal was implied through their conduct. Specifically, the Landlord maintains the Tenants' stated decision to proceed with the dispute after the Landlord expressed their intention to withdraw the Two Month Notice implied agreement.

In this case, I find there is insufficient evidence before me to conclude that the Tenants, through their conduct or otherwise, accepted the Landlord's withdrawal of the Two Month Notice. Indeed, I was not referred to any such agreement in writing as recommended in Policy Guideline #11. Further, I find that the Tenants' conduct – preserving their rights under the Act by disputing the Two Month Notice – was permitted under the Act. To suggest that the Tenants' agreement was implied from communication of their decision to proceed with a dispute is untenable.

Considering the above, and pursuant to section 62(3) of the Act, I find it is more likely than not that the Tenants did not agree with the Landlord's withdrawal of the Two Month Notice.

As the Tenants have been successful on the narrow issue before me, I find they are entitled to a monetary award of \$100.00 in recovery of a filing fee paid. As the original application could have been amended at no cost to the Tenants, the remaining filing fees are not recoverable.

Conclusion

I find it is more likely than not that the Tenants did not agree to the Landlord's withdrawal of the Two Month Notice and vacated the rental unit on November 30, 2023, in accordance with the Two Month Notice.

As the Tenants have vacated the rental unit and the tenancy has ended, I dismiss all of the issues raised in the Tenants' applications, without leave to reapply, with the exception of the Tenants' request for an order reducing rent for repairs, services, or facilities agreed upon but not provided, which I dismiss with leave to reapply.

As the Tenants have been successful on the narrow issue before me, I grant the Tenants a monetary order for \$100.00 in recovery of the filing fee. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 8, 2023

Residential Tenancy Branch