



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with an application filed by both the Tenant and the Landlords under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of the Landlords' Two Month Notice to End Tenancy for Landlords' Use of Property (Two Month Notice)
- an order regarding the Tenant's dispute of a rent increase by the Landlords pursuant to section 41 of the Act

The Landlords applied for:

- an Order of Possession based on a Two Month Notice pursuant to sections 49 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act

HJ, AJ and JK appeared at the hearing with AM appearing as lawyer for the Landlords.

SP appeared at the hearing with MH appearing as their interpreter.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

As both parties were in attendance, I confirmed that there were no issues with service of the Proceeding Packages and the parties' evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other's application materials.

Preliminary Matters

The Tenant applied for an order regarding the Tenant's dispute of a rent increase by the Landlords pursuant to section 41 of the Act as well as cancellation of the Landlords' Two Month Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. 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 hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

I find the most important issue to determine is whether or not the Two Month Notice should be cancelled. I find the Tenant's additional claim is unrelated to this issue. Therefore, I dismiss the Tenant's additional claim with leave to reapply.

While the Tenant did not apply for an extension of the time limit to dispute the Two Month Notice pursuant to sections 49 and 66 of the Act, based on the circumstances of their application, I find that I must determine this issue. For this reason, I have amended the Tenant's application based on section 64(3)(c) of the Act to include this issue.

Issues to be Decided

Is the Tenant entitled to an extension of the time limit to dispute the Two Month Notice pursuant to sections 49 and 66 of the Act?

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all relevant evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlords confirmed that they recently purchased the rental property and requested that the previous landlord issue the Two Month Notice. For this reason, they indicated that they were unable to confirm details of the tenancy. The Landlords confirmed that they have collected rent for use and occupancy only for the months of November and December 2023 in the amount of \$1,400.00. The Landlord submitted rent receipts into evidence which indicate the same.

The Tenant confirmed that rent is \$1,400.00 and indicated that they have been residing at the rental property for a period of two years and four months. The Tenant testified that no security deposit was collected.

The Tenant acknowledged receipt of the Two Month Notice attached to the door of the rental property on August 5, 2023. The Landlord confirmed that they are the purchasers who requested that the seller issue the Two Month Notice and noted that the Buyers Notice to Seller for Vacant Possession was attached to the Two Month Notice.

The Two Month Notice is submitted into evidence. It is dated August 5, 2023, and lists an effective move out date of October 31, 2023. The Two Month Notice indicates in the "Reason for this Two Month Notice" section that "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.". A copy of the "Buyers Notice to Seller for Vacant Possession" is attached to the Two Month Notice.

The Tenant applied for cancellation of the Two Month Notice on October 31, 2023.

The Tenant testified that when they received the Two Month Notice they made efforts to secure alternate housing options through BC Housing. They were unable to do so, so they applied to dispute the Two Month Notice.

The Landlords confirmed that the Two Month Notice was issued because they intend to occupy the rental unit.

Is the Tenant entitled to more time to cancel the Landlords' Two Month Notice?

Section 49 of the Act authorizes a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 further states that upon receipt of a Two Month Notice, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and that the landlord truly intends to accomplish the purpose stated on the Two Month Notice.

Based on the confirmation of the parties, I find that the Tenant was served with the Two Month Notice in person on August 5, 2023. Therefore, I find the Tenant had until August 20, 2023, to dispute the Two Month Notice.

In this case, the Tenant disputed the Two Month Notice on October 31, 2023. Therefore, I must determine whether the Tenant is entitled to more time to cancel the Two Month Notice. Section 66 of the Act provides that the director may extend a time limit established by the Act only in exceptional circumstances.

Policy Guideline 36 – Extending a Time Period describes exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Tenant's application states:

I didn't know English and couldn't understand this notice. After sometime, I showed this to my caseworker and he told me that if you don't agree this notice, you can dispute it

[reproduced as written]

When questioned during the hearing, the Tenant testified that when they received the Two Month Notice, they were not going to dispute it and attempted to look for alternate housing. Having been unable to find alternate housing, the Tenant disputed the Notice.

I have considered the Tenant's testimony and evidence and I find that they have provided two inconsistent reasons for their failure to dispute the Two Month Notice within the 15 days as required by the Act. Furthermore, I find that the Tenant has not presented any evidence or testimony to support that exceptional circumstances prevented them from disputing the Two Month Notice. On that basis, I do not accept that exceptional circumstances prevented the Tenant from disputing the Two Month Notice within 15 days after receiving it as is required by the Act.

For the above reasons, the Tenant's application for cancellation of Two Month Notice and an extension of the time limit to dispute the Two Month Notice under sections 49 and 66 of the Act is dismissed, without leave to reapply.

Should the Landlords' Two Month Notice be cancelled? If not, are the Landlords entitled to an Order of Possession?

If a tenant fails to comply with the 15-day deadline as I have found is the case here, section 49(9) is triggered such that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the notice.

Section 55(2)(b) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an application to dispute the notice, and the time for making any such application has expired.

In this case, the Landlords served the Notice in accordance with the Act, the Notice complies with section 52 of the Act, and the Tenant has not made an application to dispute the Notice. During the hearing the Landlords confirmed that it is now and has always been their intention to occupy the rental for the purpose stated on the Two Month Notice. For these reasons, I find that the Landlords have proven on a balance of probabilities that they are entitled to an order of possession.

Based on the foregoing, the Landlords are granted an order of possession that will be effective on February 29, 2024.

Are the Landlords entitled to recover the filing fee for this application from the Tenant?

As the Landlords were successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

The Tenant's application for cancellation of the Two Month Notice and an extension of the time limit to dispute the Two Month Notice under sections 49 and 66 of the Act is dismissed, without leave to reapply.

The Landlords are granted an order of possession which will be effective on February 29, 2024, after service upon the Tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlords a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the Tenant under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 Act.

Dated: February 05, 2024

Residential Tenancy Branch