



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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Decision

Introduction

Dispute codes: CNL, FFT (Tenant's Application) and OPL, FFL (Landlord's Application).

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on March 26, 2024, wherein they seek cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property and the recovery of their filing fee from the Landlord.

The Landlord filed their application on April 7, 2024. The Landlord seeks an order of possession pursuant to their Two Month Notice to End Tenancy for Landlord's Use of Property and the recovery of their filing fee from the Tenant.

Both parties attended the hearing. The Landlord attended the hearing alongside their counsel, KK.

Service of Records

Both parties acknowledged receipt of their counterparty's Proceeding Package and documentary evidence, by registered mail. Neither side raised issues regarding service of records in relation to either application and supporting evidence; accordingly, I find both parties served their counterparty with their applications and documentary evidence in accordance with sections 88 and 89 of the *Act*.

I will discuss the service of the Landlord's eviction notice to the Tenant under the "Analysis" section of my decision.

Preliminary Matters

Prior to my amendment of the Tenant's application, the Tenant had named the Landlord EH, as well as an individual by the name of JK as respondents. The Landlord's counsel informed me that JK was the Landlord's agent. The parties' tenancy agreement does not name JK as a Landlord.

After the hearing, pursuant to section 64(3)(c), I amended the Tenant's application by removing JK as a party to this dispute. In the parties' tenancy agreement, JK is not named as a landlord. JK is also not named, in their personal capacity, as an agent of the Landlord in the tenancy agreement. JK did not participate in this dispute resolution hearing.

The style of cause on the cover page of my decision reflects my amendment.

Background Facts and Evidence

I have considered both parties' testimonies, the records submitted for consideration by both parties, and KK's submissions, but I will refer only to what I find relevant to my decision.

The parties agreed that this tenancy began on September 1, 2021, and that the Landlord is holding a \$550.00 security deposit in trust for the Tenant. Both parties submitted a copy of the tenancy agreement.

KK provided the following submissions in relation to the eviction notice at the heart of this dispute:

- An agent of the Landlord served the Tenant with a copy of a Two Month Notice to End Tenancy for Landlord's Use of Property, signed by KK on January 10, 2024, with an effective date of March 31, 2024 (the **Notice**), by registered mail, on January 12, 2024.
- The Notice was available for pickup by the Tenant as early as January 13, 2024.
- The Tenant failed to take delivery of the Notice and they did not dispute the Notice until March 26, 2024; therefore, they are conclusively presumed to have accepted the end to this tenancy, pursuant to section 49(9) of the *Act*.
- The Tenant should not be granted an extension in this case, because there are no exceptional circumstances that would warrant an extension pursuant to section 66 of the *Act*.

KK provided the tracking number associated with the Notice, which I have copied on the cover page of my decision. During the hearing I checked the tracking number associated with the Notice on the Canada Post website. The Landlord also submitted a copy of the Canada Post Customer Receipt bearing the tracking number ending in the digits and letters 392CA, which KK stated is associated with the Notice.

The Landlord submitted the tracking data related to the 392CA tracking number, copied from the Canada Post website (the **Tracking History**). In the Tracking History I can see that a registered package was available for pickup on January 13, 2024. In the Tracking History I can also see that a final notice was left at the destination address on January 19, 2023. Finally, I can see that the item associated with 392CA was available for pickup until January 29, 2024.

The Tenant testified that they were outside of Canada on the date the Notice was mailed to them, but they testified that they returned to Canada on January 14, 2024. The Tenant testified that upon their return, they discovered a Canada Post registered mail slip in their mailbox, but they were unaware that the slip was related to a registered

package sent to them by the Landlord and/or their agents. The Tenant testified that they never picked up the registered package from the post office.

The Tenant testified that the Landlord's agents previously utilized other methods to serve them with records. The Tenant testified that the Landlord's agents sent the Notice by registered mail because they were aware that the Tenant was absent from Canada.

KK submitted that they were unaware of the Tenant's absence, but that if their intention was to deceive the Tenant, they would not have waited until January 12, 2024, two days prior to the Tenant's return to Canada to mail the eviction notice.

The Tenant referred me to an email that they sent to an individual with the initials JK, another of the Landlord's agents, dated December 7, 2023, wherein they inform JK that they are "traveling next week".

The Tenant testified that the first time they became aware of the Notice was by email in March 2024, which is when they applied to dispute the Notice.

Analysis

Section 49 of the *Act* states that a landlord may end a tenancy if the landlord or a close family member is going to occupy the rental unit. Section 49 of the *Act* states that upon receipt of a Notice to End Tenancy for landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 49(9) of the *Act* states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 15 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The Tenant testified that they were in Canada on January 14, 2024, the day after the Notice became available for pick up at the post office. The Tenant testified that they received the Canada Post delivery slip indicating that a package is available for pick up. The Tenant testified that they never went to the post office to pick up the registered package. For clarity, there is no evidence before me that the Canada Post delivery slip that the Tenant says they were in possession of was in relation to a package other than the package the Landlord and their counsel say contained the Notice. The Tenant testified that they did not have any indication that delivery slip was related to the Notice, because none of the Landlord's agents informed the Tenant about the Notice in any other way.

Based on KK's submissions and the records submitted by the Landlord, namely the Canada Post Customer Receipt bearing the Tenant's name, the Rental Unit's address, and the tracking number ending in the digits and letters 392CA, I find it more likely than

not that the registered package that was sent to the Rental Unit in January 2024 contained a copy of the Notice.

I do not find it relevant that the Tenant was unaware that the package waiting for them at the post office contained a copy of the Notice, because section 90(a) of the *Act* states that a record served in accordance with section 88 of the *Act*, unless earlier received, is deemed to be received on the fifth day after the day it was mailed. Section 88(c) states that a record such as an eviction notice can be served “by sending a copy by ordinary mail or registered mail to the address at which the person resides”. In this case, the Tenant was residing at the Rental Unit, and, by their own testimony, they were present in Canada on January 14, 2024 and in receipt of the delivery slip.

Policy Guideline 12 provides the following guidance (bold and underlined for emphasis):

Where a record is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Tenant deliberately failed to pick up the registered package containing the Landlord’s Notice. The Tenant’s awareness of what the registered package contained is not relevant. I cannot find any provision in the *Act* that would obligate a party to inform the counterparty of the contents of the registered package prior to its delivery. The package was available for pickup, the Tenant acknowledged receipt of the delivery slip associated with the Landlord’s registered package, and the Tenant failed to pick up the package in the two weeks that the item ‘sat’ in the post office. I note that Canada Post made at least two attempts to deliver the package.

I find, pursuant to section 90 of the *Act*, the Tenant is deemed served with the Notice, by registered mail, in accordance with section 88 of the *Act*, on January 17, 2024, the fifth day after the registered mailing date.

I now turn my mind to section 66 of the *Act*, which provides me with the discretionary power to extend a time limit established by this *Act*, in exceptional circumstances. A time limit cannot be extended beyond the effective date of the notice in question, which is not an issue in this case, because the Tenant filed their application on March 26, 2024, prior to the March 31, 2024, effective date of the Notice.

In relation to what constitutes an exceptional circumstance, the Residential Tenancy Branch’s Policy Guideline 36 states:

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

In this case, the Tenant testified that the Landlord's agents deliberately attempted to deceive the Tenant by sending a registered package when they were outside of Canada. I can find no evidence of deceit in this case. The Tenant informed JK that they will be away from Canada, not the Landlord and not KK. Even if I assume KK knew about the Tenant's absence (notwithstanding KK's submission that they were unaware of the Tenant's absence from Canada), KK's office did not mail the Notice until January 12, 2024, two days prior to the Tenant's return to Canada. The Notice first became available for pick up the day prior to the Tenant's return. The Tenant then had approximately two weeks to pick up the registered package, because they testified, they took delivery of the Canada Post delivery slip upon their return to the Rental Unit. As I have already found, the Tenant's awareness of what was inside the package is not relevant.

I find that in this case the failure to meet the relevant time limit was caused or contributed to by the conduct of the Tenant.

I decline to use my discretion in this case to extend the time limit. I find that the Tenant did not file their application in time and therefore they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which in this case was on March 31, 2024. The Tenant's application is therefore dismissed, without leave to reapply.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

However, in this case the Landlord has also applied for an Order of Possession, pursuant to section 55 of the *Act*.

I have reviewed the Notice and I find it complies with section 52 of the *Act*, because it is signed and dated by the Landlord's agent, it includes the Rental Unit's address and the Tenant's name, it states the ground under which this tenancy must come to an end, and it states the correct effective date.

I grant the Landlord's application for an order of possession.

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Policy Guideline 54 states that “there are many factors an arbitrator may consider when determining the effective date of an order of possession”. Policy Guideline 54 further states:

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for seven days after the order is received.

I asked the Tenant if there are any reasons why they would be unable to vacate the Rental Unit in seven days. The Tenant did not provide me with any reasons why they would be unable to vacate the Rental Unit in a short period of time. I note that the effective date in this case was March 31, 2024, approximately two months prior to the date of this hearing.

In the absence of any evidence for why the Tenant would be unable to vacate the Rental Unit in a short period of time, pursuant to section 55 of the *Act*, **I order this tenancy to end seven (7) days after service of the attached Order of Possession to the Tenant.**

As the Landlord was successful with their application, I grant the Landlord’s application to recover their filing fee, in the amount of \$100.00 from the Tenant, pursuant to section 72 of the *Act*. In full satisfaction of the \$100.00 award to the Tenant, pursuant to section 72 of the *Act*, **I order the Landlord** to withhold \$100.00 from the Tenant’s security deposit.

The Tenant’s security deposit is now effectively \$450.00.

Conclusion

The Tenant’s application is dismissed in its entirety, without leave to reapply. I grant the Landlord’s application in full.

Pursuant to section 55 of the *Act*, I grant the Landlord an Order of Possession, which must be served to the Tenant as soon as possible, effective seven (7) days after service of the Order to the Tenant.

The Order of Possession may be filed in British Columbia Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement may be recoverable from the Tenant.

As the Landlord was successful with their application, I grant the Landlord's application to recover their filing fee, in the amount of \$100.00 from the Tenant, pursuant to section 72 of the *Act*. In full satisfaction of the \$100.00 award to the Tenant, pursuant to section 72 of the *Act*, **I order the Landlord** to withhold \$100.00 from the Tenant's security deposit.

The Tenant's security deposit is now effectively \$450.00.

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: May 28, 2024

Residential Tenancy Branch