

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing also dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession pursuant to a Two Month Notice to End Tenancy for Landlord's Use of Property under section 49 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

Both parties confirmed receipt of the other's Application for Dispute Resolution and evidence in accordance with the Act.

Issues to be Decided

Should the Landlord's Two Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and evidence

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

Evidence was provided showing that this tenancy began in September of 2012 and that rent of \$990.00 is due by the end of each month.

The Landlord testified that he served the Tenant with the Two Month Notice on April 8, 2024 by leaving a copy in the Tenant's mail box. Both parties entered into evidence a Two Month Notice dated April 8, 2024 stating that the effective date of the Two Month Notice was June 15, 2024. The Tenant testified that he did not receive the Two Month Notice until August 1, 2024. The Tenant testified that on August 1, 2024 the Landlord attended at the rental property and told him that he did not have to pay rent for August 2024 as the tenancy was ending on September 1, 2024. The Tenant testified that he then asked the Landlord for a notice to end tenancy, and the Landlord gave him a copy of the Two Month Notice. The Tenant testified that this was the first time he received a copy of the Two Month Notice.

The Tenant filed to dispute the Two Month Notice on August 2, 2024. The Landlord applied for an Order of Possession on August 8, 2024. The copy of the Two Month Notice entered into by the Tenant is not signed by the Landlord. The Tenant confirmed that the Two Month Notice he received from the Landlord on August 1, 2024 was not signed by the Landlord. The Landlord testified that the copy of the Two Month Notice he gave the Tenant on August 1, 2024 was not a copy of the Two Month Notice served on the Tenant on April 8, 2024, just a copy he had in his vehicle at the time.

The Landlord entered into evidence RTB # 34 Proof of Service of Notice to End Tenancy which states that the Landlord served the Tenant with the Two Month Notice on April 8, 2024 by leaving a copy in the Tenant's mailbox. To confirm service RTB #34 requires the Tenant to provide a hand delivery receipt, registered mail receipt or witness statement. The Landlord did not provide any of the above.

The Landlord testified that he received a call from a property management company on May 7, 2024 checking the Tenant's references. Proof of the incoming call was entered into evidence. The Landlord testified that this call confirms that the Tenant received the Two Month Notice left in the mailbox on April 8, 2024 as why else would he have been looking for a new place to live.

The Tenant testified that he was having significant problems with the tenant living in the basement suite below his unit as she threatened his life, threatened to burn the house down and repeatedly turned off his power. The Tenant testified that the basement tenant was not evicted until June 2, 2024 and that before this he was looking for a new place to live because he was not sure if he was safe living at the rental property. The Landlord did not dispute the eviction of the basement tenant in June of 2024. The Tenant entered into evidence text messages between himself and the Landlord about some of the Tenant's concerns with the basement tenant during April and May 2024.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. The Landlord is required to prove, on a balance of probabilities, that they served the Tenant with the Two Month Notice.

I find that the Landlord has not proved, on a balance of probabilities, that the Two Month Notice was left in the Tenant's mailbox on April 8, 2024 as proof of this service was not entered into evidence. I find that the RTB #34 entered into evidence does not prove the alleged April 8, 2024 service as confirmation of this service was not provided as required on RTB Form #34.

I find that the Two Month Notice served on the Tenant on August 1, 2024 does not meet the form and content requirements of section 52 of the Act as it was not signed by the Landlord. I also note that as of July 18, 2024, the Landlord was not permitted to serve the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property as the Act was amended requiring the service of a Four Month Notice to End Tenancy for Landlord's Use of Property.

I find that the May 7, 2024 reference check phone call does not prove, on a balance of probabilities, that the Tenant was served with the Two Month Notice on April 8, 2024. I find that the Tenant provided a plausible reason as to why he was looking for another place to live at that time which is supported by the text messages entered into evidence.

The Two Month Notice dated April 8, 2024 is cancelled and of no force or effect as the Landlord failed to prove that it was served on the Tenant before July 18, 2024. The Landlord's application for an Order of Possession based on the April 8, 2024 Two Month Notice is dismissed without leave to reapply.

As the Tenant was successful in the Tenant's Application for Dispute Resolution, I find that the Tenant is entitled to recover the \$100.00 filing fee from the Landlord, under section 72 of the Act.

As the Landlord was not successful in the Landlord's Application for Dispute Resolution, I find that the Landlord is not entitled to recover the \$100.00 filing fee from the Tenant, under section 72 of the Act.

Conclusion

The Tenant's application is granted for cancellation of the Landlord's Two Month Notice under section 49 of the Act.

The Two Month Notice of April 8, 2024 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

I grant the Tenant 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 Landlord under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Tenant is provided with this Order in the above terms and the Landlord(s) must be served with **this Order** as soon as possible. Should the Landlord(s) fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in 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 Act.

Dated: October 1, 2024

Residential Tenancy Branch