



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT, PSF, RP

Introduction

On July 29, 2020, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, and seeking a repair Order pursuant to Section 32 of the *Act*.

Both Tenants attended the hearing with J.C. attending as their advocate. G.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

J.C. advised that she served the Notice of Hearing package to the Landlord by registered mail on August 7, 2020. G.C. confirmed that this package was received on August 11, 2020. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

She also advised that she served the Landlord two evidence packages by registered mail on August 17, 2020, and August 24, 2020, and a third evidence package by email on August 31, 2020. G.C. confirmed that she received one evidence package on August 15, 2020 by registered mail and the parties confirmed that this was the Tenants’ 79-page evidence package. However, she advised that she received no other evidence from the Tenants. As the 79-page evidence package was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision. However, all of the other evidence submitted by the Tenants is late. As such, it will be excluded and not considered when rendering this Decision.

G.C. advised that she served the Landlord's evidence to the Tenants by registered mail on August 12, 2020 and the Tenants confirmed that they received this evidence. As this evidence was served in accordance with the timeframe requirements pursuant to Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were served with the Landlord's evidence. As such, this evidence will be accepted and considered when rendering this Decision.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlord's One Month Notice to End Tenancy for Cause, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- Are the Tenants entitled to be granted more time to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2019. Rent was currently established at an amount of \$1,900.00 per month and was due on the first day of each month. A security deposit of \$950.00 and a pet damage deposit of \$950.00 were paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

G.C. advised that the Notice was served to the Tenants by registered mail on July 10 or 11, 2020. The Notice indicated that the effective end date of the tenancy was August 31, 2020.

Tenant L.P. advised that she received the Notice on July 11, 2020 and that she was “freaking out because she knew she had 10 days” to dispute the Notice.

J.C. advised that L.P. has a stress related disorder and suffers from seizures when placed under significant stress. Her doctor has recommended that in order to manage this health issue, L.P. should remove the source of the stress from her life. In addition to stress from the COVID pandemic, receiving this Notice placed an undue amount of stress on L.P. She confirmed that she first saw L.P. in mid-July 2020 regarding the issue of the Notice and the first intake that she had available for the Tenants was July 29, 2020. She disputed the Notice on July 29, 2020 on behalf of the Tenants.

She stated that due to the pandemic, it has been difficult to obtain any medical information to corroborate L.P.’s medical condition. In addition, due to the pandemic, her office, and other advocates, have been overwhelmed with the number of applicants, so the Tenants were unable to have this matter addressed more expediently. She confirmed that the Tenants had previously reached out to other advocates as early as July 13, 2020.

Tenant L.W. confirmed that they contacted several other advocates, but they were unable to help the Tenants. He stated that both of them were computer illiterate and were not “good at navigating” this situation. He advised that he also suffers from stress related seizures due to brain tumours; however, he did not submit any medical documentation to confirm any health issues. He stated that L.P. was unable to obtain any medical information as her doctor died last year.

D.C. stated that either Tenant could have disputed the Notice. As well, she received an email on July 17, 2020 from a different advocate that the Tenants had reached out to, and this person could have disputed the Notice on their behalf.

L.W. confirmed that this other advocate contacted G.C.; however, he stated that the advocate acknowledged that G.C. was unreasonable.

L.P. stated that she had been in contact with this other advocate every day, and he then just handed their file off to J.C.

J.C. advised that this other advocate did not tell the Tenants to seek advice regarding how to handle the Notice. Getting this Notice during a pandemic caused a significant amount of stress on the Tenants and they were unable to cope. She stated that L.P. came into her office and advised that it was her responsibility to deal with the Notice as L.W. worked full time.

L.P. confirmed that as L.W. worked full time, and as she was on disability, she had “more time” to deal with the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenants on July 10, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Landlord served the Notice on July 10, 2019 by registered mail and L.P. confirmed receiving it on July 11, 2020. According to Section 47(4) of the *Act*, the Tenants have 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.”* I find it important to note that this information is provided on the third page of the Notice as well.

As the Tenants received the Notice on July 11, 2020, the tenth day to dispute the Notice fell on Tuesday July 21, 2020 and the Tenants must have made this Application by that day at the latest. However, the undisputed evidence is that the Tenants made their Application on July 29, 2020. As the Tenants were late in making this Application, they requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the Notice “only in exceptional circumstances.” When the Tenants were questioned if there were any exceptional circumstances that prevented them from disputing the Notice within the required time frame, J.C. cited L.P.’s medical condition

as the main reason the Notice was not disputed on time. As well, L.W. advised that he similarly suffered from seizures.

While I acknowledge that both Tenants may have some medical issues, I find it important to note that there has been no medical documentation submitted that confirms that either Tenant suffered from any medical issues, or that they suffered these issues during the period with which they were required to dispute the Notice. As such, I am not satisfied that they have supported that there were exceptional circumstances, in the form of a medical condition, that prevented them from disputing the Notice on time.

With respect to J.C.'s submission that advocates were unavailable to help the Tenants in time, while I acknowledge that the pandemic has made many services more difficult to obtain, I find it important to note that L.P. testified that she knew she had ten days to dispute the Notice after receiving it, that the Tenants had reached out to multiple advocates within that 10 day time period and had talked to at least one advocate about this Notice, and that the Tenants had also approached J.C. about this issue on July 13, 2020. Given that both Tenants and J.C. knew that there was a limited time to dispute the Notice, it is still not clear to me why none of the parties did so within the required time frame.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenants' testimony and reasons would constitute exceptional circumstances. However, based on the limited submissions provided, I find that there was insufficient evidence that the Tenants had significant issues or exceptional circumstances that prevented them from disputing the Notice on time. Furthermore, I do not find that there is compelling or persuasive evidence, or a reasonable explanation for why either Tenant, J.C., or another person could not have disputed the Notice. As a result, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

Conclusion

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective at **1:00 PM on September 30, 2020** after service on the Tenants.

Should the Tenants or any occupant on the premises 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: September 1, 2020

Residential Tenancy Branch