



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC MT

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause (the “*Notice*”).

Tenant CK, the landlord, the spouse of the landlord, and the niece of the landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence. I find the parties were sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matter

As I have found later in this decision that one of the named tenants, KK, is an occupant with no rights or obligations under the *Act*, and not a tenant, I have removed KK from the style of cause.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

A month to month tenancy agreement began on January 1, 2012. Monthly rent in the amount of \$900.00 is due on the first day of each month. The tenant paid a security deposit of \$450.00 at the start of the tenancy.

The tenant confirmed that he was served by the landlord in person at the rental unit on May 20, 2013 with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated May 10, 2013 alleging four causes including the repeated late payment of rent.

The tenant did not dispute the 1 Month Notice until June 7, 2013 and amended his application on June 10, 2013. The effective vacancy date on the 1 Month Notice is listed as June 10, 2013. The tenant confirmed that he received both pages of the 1 Month Notice.

The tenant stated that the reason he did not apply to dispute the 1 Month Notice within 10 days as indicated on page two of the 1 Month Notice was that he was trying to find another place to live and "needed more time".

The landlord made a verbal request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant CK is the only tenant named in the tenancy agreement. During the hearing, the tenant confirmed that KK is his son. Therefore, **I find** that the other named applicant on the tenants' application, KK, is the son of tenant CK, and is not named as a tenant in the tenancy agreement and that KK is an occupant with no rights or obligations under the *Act*, and is not a tenant.

I will now deal with the tenant's request for more time to make an application to cancel the 1 Month Notice. Section 47 of the *Act* provides a timeline of 10 days for a tenant to dispute a 1 Month Notice issued under section 47 of the *Act*. In the matter before me, the tenant confirmed that he received the 1 Month Notice in person from the landlord on May 20, 2013. The 1 Month Notice is dated May 10, 2013 and has an effective vacancy date of June 10, 2013 which automatically corrects under the *Act* to June 30, 2013.

The tenant testified that he did not dispute the 1 Month Notice as he "needed more time" to find a new residence. Section 66 of the *Act* states:

Director's orders: changing time limits

66 (1) The director may extend a time limit established by this Act **only in exceptional circumstances**, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

(2) Despite subsection (1), the director may extend the time limit established by section 46 (4) (a) *[landlord's notice: non-payment of rent]* for a tenant to pay overdue rent only in one of the following circumstances:

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

[emphasis added]

I find that the reason provided by the tenant is not an exceptional circumstance under section 66 of the *Act*. Therefore, **I find** the tenant did not apply to dispute the 1 Month Notice within the 10 day timeline pursuant to section 47 of the *Act*. Pursuant to section 47(5) of the *Act* **I find** the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date on the 1 Month Notice, June 30, 2013. Therefore, **I dismiss** the tenant's application and **I uphold** the landlord's 1 Month Notice. Section 55 of the *Act* states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

[emphasis added]

As the landlord made a verbal request for an order of possession during the hearing and the tenant continues to occupy the rental unit, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* effective **two (2) days** after service on the tenant. This order may be enforced in the Supreme Court of British Columbia.

As the tenant's application to cancel the 1 Month Notice was dismissed based on conclusive presumption under section 47 of the *Act*, **I find** it is not necessary to consider the causes as written on the 1 Month Notice.

Conclusion

I dismiss the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause. I uphold the 1 Month Notice issued by the landlord.

I grant the landlord an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 12, 2013

Residential Tenancy Branch

