



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cedar West Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC
Tenants: CNC

Introduction

This hearing dealt with cross Applications for Dispute Resolution the tenants sought to cancel a notice to end tenancy and the landlord sought an order of possession.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

The tenants had submitted their Application for Dispute Resolution on June 29, 2015 seeking to cancel a notice to end tenancy issued, according to their Application on June 18, 2015. The landlord submitted their Application for Dispute Resolution on August 5, 2015 seeking an order of possession resulting from a 1 Month Notice to End Tenancy for Cause issued on July 29, 2015.

The Applications were scheduled to be heard as "cross Applications". However, as the issues were related to two separate notices to end tenancy I find that they should have not been set up to be heard at the same time. As both parties were present and prepared to deal with both Applications I heard both and write this decision in response to both Applications.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Sections 47 and 55 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 47 and 52 of the *Act*.

Background and Evidence

The parties agreed the tenants had indicated that they had not received a 1 Month Notice to End Tenancy for Cause issued by the landlord on May 31, 2015. The tenants submit that they did not know about the landlord wanting to end the tenancy until they received a letter from the landlord on June 18, 2015.

The letter was submitted into evidence by the tenants. The opening sentence in the letter states: "Further to our '1 month notice to end tenancy for cause', we have now re-rented your apartment for July 1, 2015". The tenants submit this was the first time they were informed of a notice to end tenancy.

The landlord wrote in their Application for Dispute Resolution: "The tenants claim they did not receive our 1 month notice to end tenancy that was attached to the door May 31, 2015. We subsequently served the tenant, in person with a 2nd One Month Notice 'to end Tenancy on July 29, 2015.'"

Copies of two 1 Month Notices to End Tenancy for Cause were submitted into evidence; one issued on May 31, 2015 and one issued on July 29, 2015. Both Notices stipulated the reason for ending the tenancy was because the tenant or a person permitted on the residential property by the tenant has significantly interfered with our unreasonably disturbed another occupant or the landlord. The Notice issued on July 29, 2015 provided an effective vacancy date of August 31, 2015.

The landlord submitted a Proof of Service document signed by the landlord's agent and a witness confirming the tenant AC was served with the Notice on July 29, 2015 at 4:00 p.m. The tenant AC acknowledged receipt of this notice on this date and time. The tenants confirmed they did not file an Application for Dispute Resolution seeking to cancel the Notice issued on July 29, 2015.

Analysis

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

In relation to the tenants' Application for Dispute Resolution, I find the letter dated June 18, 2015 from the landlord was not a Notice to End Tenancy that would comply with the requirements of Section 52.

Without determination of whether or not the tenants did receive the 1 Month Notice issued on May 31, 2015 I accept the landlord accepted they had not received this Notice. As a result of this determination of the landlord they issued a new Notice on July 29, 2015.

Therefore, I grant the tenant's Application to cancel the "notice" to end tenancy provided to them on June 18, 2015.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has

significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

As per the tenant's testimony, I find the tenants failed to file an Application for Dispute Resolution seeking to cancel the Notice to End Tenancy issued by the landlord on July 29, 2015 within 10 days of receipt of the Notice, in accordance with Section 47(4) of the *Act*. As a result, I find the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: September 01, 2015

Residential Tenancy Branch

