



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT CNC FF O

Introduction

The tenants applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”), for more time to make an application to cancel a Notice to End Tenancy, to recover the cost of the filing fee, and “other” although details of “other” do not indicate a different remedy than what has been described already above.

The tenants and the landlord, attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained to the parties and the parties were provided the opportunity to ask questions about the hearing process.

The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

Preliminary and Procedural Matter

Although the tenants applied for more time to make an application to cancel a Notice to End Tenancy, the parties agreed that the 1 Month Notice dated July 15, 2015 was received by the tenants on the July 15, 2015, and that the tenants applied on July 27, 2015, which is within the 10 day timeline provided for under section 47 of the *Act*. July 25, 2015 was a Saturday and the next business day was Monday, July 27, 2015, which makes Monday, July 27, 2015 in this matter, within the 10 day timeline pursuant to section 25(3) of the *Interpretation Act*. Given the above, I dismiss the tenants’ application for more time to make an application to cancel a Notice to End Tenancy as the tenants did apply on time in accordance with section 47 of the *Act*.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy agreement began on June 1, 2015 and required vacant possession to be returned to the landlord as of September 30, 2015. Monthly rent of \$800 was due on the first day of each month. The tenants paid a security deposit of \$400 at the start of the tenancy, which the landlord continues to hold.

The tenants confirmed that they received a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated July 15, 2015 alleging three and had an effective vacancy date of August 15, 2015, which would automatically correct under section 53 of the *Act* to August 31, 2015 as rent is due on the first day of each month. Although the tenants did dispute the 1 Month Notice on time, the tenancy actually ended on September 30, 2015 based on the fixed term tenancy agreement which all the parties signed and initialed indicating that the tenants would vacate the rental unit by September 30, 2015.

During the hearing, the landlord made a verbal request for an order of possession.

Analysis

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

Tenant request to cancel 1 Month Notice – I find the tenancy has already ended effective September 30, 2015 by way of the fixed term tenancy agreement pursuant to section 44(1)(b) of the *Act* which states:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

[my emphasis added]

Therefore, I find the tenants' application to be moot and is dismissed without leave to reapply as the tenancy ended effective September 30, 2015. Once the tenants' application was dismissed, the landlord made a verbal request for an order of possession. 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.**

[my emphasis added]

As the landlord verbally requested an order of possession during the hearing and the tenants continue 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 tenants as the corrected effective vacancy date of the 1 Month Notice has already passed, August 31, 2015.

Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The tenancy ended on September 30, 2015 in accordance with section 44(1)(b) of the *Act* at the end of the fixed term tenancy which required the tenants to provide vacant possession of the rental unit, which the tenants failed to do as they continue to occupy the rental unit as of the date of this hearing, October 6, 2015.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants 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: October 6, 2015

Residential Tenancy Branch

