



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a notice to end tenancy for Landlord’s use of the property; for more time to cancel the notice to end tenancy; and to recover the filing fee from the Landlord.

The Landlord named on the Tenant’s Application appeared for the hearing and explained that she had taken over the Tenant’s tenancy on July 28, 2015 as the owner of the rental unit. The Landlord explained that on August 9, 2015 she served the Tenant with a 2 Month Notice to End Tenancy for Landlord’s Use of the Property (the “Notice”). The Notice was provided into evidence by the Tenant and has a vacancy date of October 9, 2015. The reason on the Notice for ending the tenancy is because the Landlord wants to occupy the rental unit.

The Landlord argued that the Tenant had not applied within the 15 day time limit provided by the Notice and therefore she wanted an Order of Possession. The Landlord also testified that the Tenant had not paid rent for October and November 2015.

There was no appearance for the Tenant despite the Tenant being given ten minutes to appear for the hearing. I note that the Tenant made her Application on September 23, 2015 after confirming on the Application that she had received the Notice on August 9, 2015. This was outside of the 15 day time limit provided by 49(8) of the *Residential Tenancy Act* (the “Act”).

As the Tenant failed to appear for the hearing and provide reasons of exceptional circumstances as to why the Application was filed outside of the time limit set by the Act and why the Notice was being disputed, I dismiss the Tenant’s Application without leave to re-apply.

The Landlord explained that she had served the Notice to the Tenant because she wanted to move into the rental unit. The Landlord acknowledged that the vacancy date of

the Notice was incorrect. However, pursuant to Section 53 of the Act, the vacancy date on the Notice of October 9, 2015 is corrected to October 31, 2015.

Having examined the Notice, I find that the contents and the approved form it was provided to the Tenant on comply with Section 52 of the Act. Section 55(1) of the Act states that if a tenant makes an Application to dispute a Notice and the Application is dismissed, the Arbitrator must grant an Order of Possession if the landlord makes an oral request during the hearing.

As I have dismissed the Tenant's Application, I grant the Landlord's oral request for an Order of Possession pursuant to Act. As the effective date of the Notice has now passed and the Tenant has not paid any rent for November 2015, the Order of Possession is effective two days after service on the Tenant.

This order must be served onto the Tenant and if the Tenant fails to vacate the rental suite in accordance with the order, the order may be enforced in the Supreme Court of British Columbia as an order of that court. Copies of the order are attached to the Landlords' copy of this decision.

Conclusion

The Tenant failed to appear for the hearing and present the merits of the Application. Therefore, the Tenant's Application is dismissed. The Landlord's oral request for an Order of Possession is granted effective two days after service on the Tenant.

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: November 25, 2015

Residential Tenancy Branch

