



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC CNC MND MNR MNSD MNDC FF

Introduction

This hearing convened pursuant to applications by the landlord and the tenant. The landlord applied for an order of possession and monetary compensation. The tenant applied to cancel a notice to end tenancy, as well as for monetary compensation. Two agents for the landlord, the tenant and an advocate for the tenant participated in the teleconference hearing.

At the outset of the hearing I informed the parties that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the applications in the conclusion of my decision.

Preliminary Issues

Tenant's Adjournment Request

The tenant requested an adjournment on the ground that she has been dealing with medical issues and she has had no time to prepare for the hearing. The landlord opposed an adjournment. I denied the tenant's request for an adjournment, as she has been aware of the issue of the notice to end tenancy for months, and her medical issues have been ongoing and not unanticipated.

Service of Landlord's Application and Evidence

The tenant stated that she never received the landlord's application or evidence packages. The landlord submitted evidence to show that they sent the hearing package to the tenant by registered mail. The tenant stated that she told the landlord she would be out of the city until the end of the summer, and she had only returned to the building 10 days or two weeks before the hearing. The tenant later stated that she had been in the building every day in September and October. The tenant also later stated that she does not have a fob, and no one could have taken it and used it because she lost the fob when she was out of the city. The tenant acknowledged that she lost her mailbox key and did not want to pay \$10.00 to get a replacement key.

The landlord stated that the tenant told them that she lost her mailbox key and they offered to cut her a new key for \$10.00. The tenant declined, and instead asked that staff open her mailbox for her. The landlord submitted evidence that the tenant's fob was used to gain entrance to the building 27 times in the month of September 2016.

I found that the tenant's evidence was contradictory and unreliable, while the landlord's evidence was clear and supported. The tenant acknowledged that she did not want to pay for a replacement mail key. She also stated that she had attended in the building several times, but she apparently did not have someone open her mailbox. I find that the tenant's behaviour amounts to an attempt to avoid service of the landlord's evidence, which is prohibited under the Act. I found that the tenant was deemed served with the landlord's application and evidence packages.

Tenant's Application to Cancel the Notice to End Tenancy

The landlord provided evidence to show that on June 29, 2016 at 9:53 p.m., two employees of the landlord attended at the tenant's unit and personally served the tenant with a notice to end tenancy for cause.

The tenant applied on August 18, 2016 to cancel the notice to end tenancy. The tenant stated that she was not personally served with the notice, and by 10:00 p.m. she is in bed under heavy medication. The tenant stated that she found the notice on her rental unit door in July 2016, but she could not say when.

I found that the landlord's evidence regarding service of the notice to end tenancy dated June 29, 2016 was clear and well-supported. I accepted the landlord's evidence that the tenant was personally served with the notice on June 29, 2016. The tenant had 10 days after service of the notice to make her application to dispute it. The tenant did not apply until August 18, 2016, and she did not apply for an extension of time to make her application. The Act does not allow for an extension of time beyond the effective date of the notice, and in this case the effective date of the notice was July 31, 2016.

As the tenant applied late to cancel the notice to end tenancy, and she could not have received an extension of time beyond the effective date of the notice, her application to cancel the notice is dismissed.

I am satisfied that the notice to end tenancy for cause dated June 29, 2016 complies with the requirements under section 52 regarding form and content.

Under section 55 of the Act, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the order of possession. Accordingly, I grant the landlord an order of possession.

The landlord confirmed that the tenant's rent has been paid for October 2016, and I therefore make the order effective October 31, 2016.

As the landlord's application for an order of possession was successful, they are entitled to recovery of the \$100.00 filing fee for the cost of their application.

Conclusion

The tenant's application to cancel the notice to end tenancy dated June 29, 2016 is cancelled and the landlord is granted an order of possession effective October 31, 2016. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord a monetary order for \$100.00, as they are entitled to recovery of their filing fee. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the landlord's monetary claim and the tenant's monetary claim are dismissed with leave to reapply.

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: October 11, 2016

Residential Tenancy Branch