



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was set for a telephone conference call at 11:00 a.m., in response to an Application for Dispute Resolution (the “Application”) made the Tenants on August 11, 2016. The Tenants applied to cancel a notice to end tenancy for cause.

The Landlord named on the Application appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Tenants despite the line being left open for ten minutes to allow them to appear. The Landlord testified that she had been served notice of this hearing by the Tenants.

Preliminary Findings

The Residential Tenancy Branch Rules of Procedure state that a hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the Application, with or without leave to re-apply.

As the Applicant Tenants failed to appear for the hearing and present the merits of the Application, and the Landlord appeared and was ready to proceed, I dismissed the Tenants’ Application **without** leave to reapply.

Section 55(1) of the *Residential Tenancy Act* (the “Act”) provides that if a tenant makes an Application to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession to the landlord if the notice to end tenancy complies with Section 52 of the Act.

The Landlord testified that the Tenants were served with 1 Month Notice to End Tenancy for Cause (the “Notice”) on August 2, 2016. The Tenants provided a copy of the Notice into evidence prior to this hearing which shows a vacancy date of September 5, 2016.

The Landlord testified that the Tenant is still occupying the rental unit and while she has received a cheque for October 2016 from a third party government agency, she has not cashed it pending the outcome of this hearing as she does not want to re-instate the tenancy.

I have examined the Notice provided by the Tenants and I find that the form and contents of the Notice comply with Section 52 of the Act. As the Tenant's Application has been dismissed, I must now grant the Landlords an Order of Possession pursuant to Section 55(1) of the Act.

The Landlord testified that the Tenants rent for this tenancy is payable on the first day of each month. When a landlord serves a tenant with a Notice, pursuant to Section 47(2) of the Act the vacancy date must account for one full rental months of notice, not one calendar month. Therefore, pursuant to Section 53 of the Act the effective vacancy date on the Notice is corrected to September 30, 2016. In consideration of when the Order of Possession is to take effect, the effective vacancy date has now passed and the evidence before me is that the Tenants are still occupying the rental unit. As the Landlord has not accepted any rent for October 2016 at the time of this hearing, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenants.

Copies of this order are attached to the Landlord's copy of this decision. This order may be filed and enforced in the BC Supreme Court as an order of that court if the Tenants fail to vacate the rental unit. This file is now closed. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 03, 2016

Residential Tenancy Branch