



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY VIEW GARDENS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution (the "Application") under the *Residential Tenancy Act* (the "Act") seeking to cancel a 1 Month Notice to End Tenancy for Cause dated September 24, 2016 (the "1 Month Notice").

An agent for the landlord (the "agent") attended the teleconference hearing. The hearing was held by way of conference call and began promptly as scheduled at 11:00 a.m. Pacific Time on Thursday, November 24, 2016, as per the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") provided to the tenant dated October 6, 2016. The telephone line remained open while the phone system was monitored for 11 minutes and the only participant who called into the hearing during this time was the agent for the landlord who was ready to proceed. The agent testified that the tenant continues to occupy the rental unit.

Preliminary and Procedural Matters

The agent testified that the agent was personally named as a respondent when in fact the 1 Month Notice listed the landlord name and as a result, the agent requested to have the proper name of the landlord included as a respondent instead of the personal name of the agent only. Pursuant to section 64(3)(c) of the *Act* I amend the Application before me accordingly to include the correct name of the landlord.

In addition, I find the tenant made an obvious error on her Application by not including her unit number in the dispute address portion of the Application. As a result, I have corrected that obvious error by further amending the tenant's Application to include the full rental unit address as the dispute address by adding the tenant's unit number to the Application pursuant to section 64(3)(c) of the *Act*.

Background and Evidence

The agent testified that the 1 Month Notice was served on the tenant which is supported by the fact that the tenant dispute the 1 Month Notice but failed to attend the scheduled hearing this date. The agent testified that while the landlord has not reinstated the tenancy and is seeking an order of possession, the tenant did not vacate the rental unit by October 31, 2016 which was the effective date listed on the 1 Month Notice, the landlord accepted money for November 2016 as the tenant remained occupying the rental unit under the basis that money paid was for “use and occupancy” only.

The hearing continued for a total of eleven minutes. After the standard ten minute waiting period, the tenant’s Application was dismissed in full without leave to reapply as the tenant failed to attend the hearing and the agent was present and ready to proceed.

Analysis

Based on the landlord’s undisputed documentary evidence and the agent’s undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

After the standard ten minute waiting period, the tenant’s application was **dismissed in full, without leave to reapply**. Section 55 of the *Act* applies and 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 to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[my emphasis added]

Pursuant to section 55 of the *Act*, **I must grant** the landlord an order of possession. Given that money was accepted to use and occupancy for November 2016, I find that

the landlord did not reinstate the tenancy and is entitled to an order of possession effective **November 30, 2016 at 1:00 p.m.** which must be served on the tenant.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlord has been granted an order of possession effective November 30, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, except as 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: November 24, 2016

Residential Tenancy Branch