



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, OPC, FF

Introduction

This was a cross-application hearing.

On October 12, 2016 the tenant has applied to cancel a one month Notice to end tenancy for cause that was issued on September 23, 2016 and to recover the filing fee cost from the landlord.

On October 17, 2016 the landlord applied requesting an order of possession based on cause and to recover filing fee cost from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The witnesses were excused from the hearing until, when and if, they were required.

The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the one month Notice ending tenancy for cause issued on September 23, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The landlord and the tenant agree that a one month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit on October 31, 2016.

The reasons stated for the Notice to End Tenancy were that the tenant or person permitted on the property by the tenant has:

- has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; and
- put the landlord's property at significant risk.

The tenant had applied requesting more time to dispute the Notice, but altered the application to remove that request as the tenant believed the Notice to end tenancy was received on October 3, 2016.

The landlord submitted a proof of service document, signed by the tenant, acknowledging receipt of the Notice to end tenancy on September 26, 2016.

The tenant supplied a copy of a note issued by a physician on October 24, 2016 indicating that on October 2, 2016 the tenant attended the emergency ward of a hospital and a walk-in clinic on October 3, 2016. The tenant said she was too ill to apply to dispute the Notice within the required time limit. The tenant mistakenly believed that the Notice to end tenancy was served on October 3, 2016.

Analysis

From the evidence before me I find that the tenant received the one month Notice to end tenancy for cause on September 26, 2016. The tenant signed, confirming receipt of the Notice on September 26, 2016; this is undeniable.

Section 47(4) of the Act requires a tenant to dispute a one month Notice ending tenancy within 10 days of receiving the Notice. I find that the tenant did not dispute the Notice until the 16th day after receipt of the Notice; on a Thursday.

Section 66(1) of the Act allows an arbitrator to extend a time limit established by the Act only in exceptional circumstances. There was no evidence to convince me that the tenant had been so ill that an application disputing the Notice could not have been made within 10 days of September 26, 2016. The tenant went to an emergency department on October 2, 2016 and then on October 3, 2016 attended at a walk-in clinic, neither of which provides any evidence that the tenant was incapacitated for a 10 day period of time following September 26, 2016.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Therefore, I find that when the tenant failed to dispute the Notice ending tenancy within 10 days of September 26, 2016 that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice; October 31, 2016.

Therefore, I find that the tenants' application is dismissed.

Therefore, I find pursuant to section 55(1) of the Act that the landlord is entitled to an order of possession.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

As the landlords' application has merit I find that the landlord is entitled to recover the \$100.00 filing fee cost from the tenant.

Based on these determinations I grant the tenant a monetary order in the sum of \$100.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court. The landlord is at liberty to deduct the filing fee from any deposit held in trust.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to an order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding 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: December 05, 2016

Residential Tenancy Branch

