



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 10, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for cause; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on his own behalf, as did the Landlord. Both parties provided affirmed testimony.

The Tenant testified that his Application package was served on the Landlord by registered mail on November 12, 2016. The Landlord acknowledged receipt on or about that date.

The Landlord testified that she served her documentary evidence on the Tenant by registered mail on December 21, 2016. The Tenant confirmed receipt and that he had had an opportunity to consider it. The only issue the Tenant raised with respect to the Landlord's documentary evidence was the way it was organized.

No further issues were raised by either party with respect to service or receipt of the above documents, and both attended and were prepared to proceed.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling a notice to end tenancy for cause?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenant provided with his documentary evidence a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 5, 2015 (the "2 Month Notice"). The Tenant's Application and his oral testimony confirmed the 2 Month Notice was received by him on October 5, 2016. However, the Tenant stated he did not dispute the 2 Month Notice because the Landlord withdrew it. According to the Tenant, it was withdrawn because it had an incorrect effective date. Although the Landlord acknowledged the effective date on the 2 Month Notice was incorrect, the Landlord vehemently denied it had ever been withdrawn.

Subsequently, the Landlord issued a 1 Month Notice to End Tenancy for Cause, dated October 31, 2016 (the "1 Month Notice"). According to the Landlord, the 1 Month Notice was served on the Tenant, in person, on October 31, 2016. For the reasons that follow, it was not necessary for me to hear or consider evidence with respect to the 1 Month Notice.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 49 of the *Act* permits a landlord to end a tenancy for the landlord's use of property by issuing a notice to end tenancy. A tenant has 15 days after receipt of a notice to end tenancy under this section to file an application for dispute resolution. If a tenant does not dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date provided.

In this case, I find the 2 Month Notice issued by the Landlord was received by the Tenant on October 5, 2016. Although the effective date of the 2 Month Notice was December 10, 2016, the effective date is deemed to be corrected to December 31,

2016, pursuant to section 53 of the *Act*. The Tenant acknowledged he did not dispute the 2 Month Notice, and I find there is insufficient evidence before me to conclude it was ever withdrawn by the Landlord.

Accordingly, pursuant to section 49(9) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on December 31, 2016, and must vacate the rental unit by that date. The Tenant's Application is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 2 Month Notice, I find it complies with section 52 of the *Act*. Accordingly, by operation of section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective on December 31, 2016, at 1:00 p.m.

Conclusion

The Tenant's Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on December 31, 2016, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: December 29, 2016

Residential Tenancy Branch