



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER RESOURCE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- cancellation of the landlord's One Month Notice To End Tenancy for Cause (the "One Month Notice").

The landlord's agent (the "landlord") and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

A copy of the One Month Notice was not submitted as evidence at the time of the hearing. The landlord and tenant were asked to provide a faxed copy of the One Month Notice by 4:00 p.m. on January 4, 2017. Both the tenant and the landlord faxed a copy as requested. The tenant did not challenge the validity of the One Month Notice.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?

Background and Analysis

The undisputed evidence established that the tenant was residing in the rental unit on a month to month basis with rent due on the first day of each month. No further particulars were given as to the details of the tenancy.

The landlord and tenant agreed that the landlord served the tenant with a One Month Notice on November 16, 2016 in person by handing her a copy. The One Month Notice dated November 16, 2016 required the tenant to vacate the rental unit on December 22, 2016.

The landlord's reasons for ending the tenancy set out in the One Month Notice are as follows:

- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord;
- that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant filed an Application for Dispute Resolution to dispute the One Month Notice on November 28, 2016.

Section 47(4) of the *Act* stipulates that a tenant has 10 days from the date of receiving the One Month Notice to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me the tenant filed her application 12 days after receiving the One Month Notice.

Section 47(5) of the *Act* stipulates that if a tenant who has received a One Month Notice does not make an application for dispute resolution within the 10 days of receipt of the Notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Pursuant to section 47(5) of the *Act*, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice as the tenant's application for dispute resolution was made outside the required time frame.

Section 47(2) of the *Act* stipulates that the effective date in a One Month Notice must not be earlier than one month after the date the notice is received; and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As the tenant received this Notice on November 16, 2016, I find that the earliest effective date of the Notice is December 31, 2016.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this One Month Notice was December 31, 2016.

Based upon the undisputed evidence of the landlord and tenant, I find that the tenant was served with a One Month Notice that required the tenant to vacate the rental unit on December 31, 2016, pursuant to section 47 of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the One

Month Notice, December 31, 2016.

After reviewing the One Month Notice, I find that the landlord's One Month Notice complies with s.52 of the *Act*, and that the landlord served the One Month Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to cancellation of the One Month Notice and I uphold the notice to end the tenancy.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession.

Conclusion

The tenant's application to cancel the One Month Notice is dismissed without leave to reapply as it was made outside the timeframe required under the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless 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: January 25, 2017

Residential Tenancy Branch