



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to consider the tenant's application for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties attended the hearing, I confirmed there were no issues with service. The landlord testified that he served the 1 Month Notice on the tenant personally on October 29, 2016. The tenant confirmed receipt. I find that the tenant was served on October 29, 2016 in accordance with section 88 of the Act.

The tenant testified that he initially filed his application for dispute resolution on November 30, 2016. The tenant testified that he was instructed to correct some typographic errors and resubmitted his application on December 5, 2016. The tenant testified that he served the corrected application for dispute resolution on the landlord personally on December 5, 2016. The landlord confirmed receipt of the tenant's application. I find that the landlord was served with the tenant's application for dispute resolution on December 5, 2016 in accordance with section 89 of the Act.

Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed on the following facts. This month to month tenancy began approximately 18 months ago. The tenant resides on the lower floor of a detached house and there are a number of other occupants in the upper levels. Rent is \$400.00 a month and is payable on the first of each month. There is a large accumulation of items such as rubbish, metal, lumber, plastic, equipment and other materials on and about the premises. The accumulation of materials has gained the attention of the local bylaw enforcement officers who have issued written warnings.

The tenant testified that while he intends to clean some of the materials that are his responsibility the winter weather has prevented him from cleaning or dealing with the removal of these items.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. I do not find his disputed testimony that he was told by the landlord that the 1 Month Notice was withdrawn to be credible. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, November 30, 2016.

Section 55(1) of the *Act* reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. The notice provides the reasons for ending the tenancy, noting that the tenant has seriously jeopardized the health or safety

or lawful right of another occupant or landlord and has put the landlord's property at significant risk.

As I have dismissed the tenant's application to dispute the 1 Month Notice, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The tenant's application is dismissed without leave to reapply.

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: January 13, 2017

Residential Tenancy Branch