



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, dated November 22, 2016, which was amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on December 31, 2016 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a notice to end tenancy for cause;
- an order cancelling a notice to end tenancy for landlord's use of property;
- an order that the Landlord comply with the *Act*, regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant K.T. attended the hearing on behalf of both Tenants. The Landlord attended the hearing his own behalf. Both parties provided a solemn affirmation at the beginning of the hearing.

The Tenant K.T. testified the Tenants' Application package and amendment were served on the Landlord on January 5, 2017. Although received late, the Landlord acknowledged receipt. The Landlord testified his documentary evidence was served on the Tenants by registered mail on December 6, 2016. In support, the Landlord submitted a Canada Post registered mail receipt bearing the same date. The Tenant K.T. advised she received only a 1 Month Notice to End Tenancy for Cause, dated December 6, 2016 (the "1 Month Notice"), in that package. The Tenants' Amendment to an Application for Dispute Resolution confirms the 1 Month Notice was received on December 6, 2016. I find it more likely than not that the remainder of the Landlord's evidence was also received by the Tenants on that date. In any event, the evidence relied upon in this Decision is the 1 Month Notice and the signed and dated tenancy agreement between the parties, copies of which were submitted into evidence by both parties. I find there is no prejudice to either party in considering these documents.

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. Are the Tenants entitled to an order cancelling the 1 Month Notice?
2. Are the Tenants entitled to an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 8, 2016 (the "2 Month Notice")?
3. Are the Tenants entitled to an order that the Landlord complies with the *Act*, regulations or a tenancy agreement?
4. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted a copy of the written tenancy agreement between the parties with his evidence. It confirms a fixed-term tenancy for the period from November 1, 2015 to November 1, 2016. Thereafter, the tenancy continued on a month-to-month basis. During the fixed term, rent in the amount of \$1,850.00 was due on the first day of each month.

The evidence confirms the 1 Month Notice was received by the Tenants on December 6, 2016. The Tenants disputed the 1 Month Notice on December 31, 2016, by filing an Amendment to an Application for Dispute Resolution.

Analysis

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

Section 47 of the *Act* permits a landlord to end a tenancy for cause for the reasons listed therein. A tenant who receives a notice to end tenancy for cause has 10 days after receiving it to dispute the notice. Failure to do so results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the undisputed evidence confirms the Landlord served the 1 Month Notice on the Tenants on December 6, 2016. The Tenant's Amendment to an Application for

Dispute Resolution confirms receipt of the 1 Month Notice on that date. The Tenants disputed the 1 Month Notice on December 31, 2016. I find that the Tenants did not dispute the 1 Month Notice within 10 days after receiving it. Accordingly, pursuant to section 47(5) of the *Act*, they are conclusively presumed to have accepted the tenancy ended on the effective date of the 1 Month Notice.

In this case, the effective date provided on the 1 Month Notice is in error. However, pursuant to section 53(3) of the *Act*, this error is automatically changed to comply with the *Act*. In this case, and pursuant to section 53(3) of the *Act*, I find the effective date of the 1 Month Notice is deemed to be January 31, 2017.

In light of the above, I order that the 1 Month Notice is upheld and the Tenants' 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 1 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 January 31, 2017, at 1:00 p.m. As I have found the tenancy will end based on the 1 Month Notice, it is not necessary for me to consider the remainder of the relief sought by the Tenants.

Conclusion

The Tenants' Application is dismissed.

By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on January 31, 2017, at 1:00 p.m. This order 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: January 16, 2017

Residential Tenancy Branch