



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that he served the notice of hearing package via email to the landlord on January 4, 2017. The landlord confirmed receipt of the package as claimed by the tenant. Both parties were cautioned that email was not a currently accepted form of service, but as both parties confirmed the contents and the time and manner of service, I find that the landlord was sufficiently served on January 4, 2017 as per section 90 of the Act. The tenant submitted no further evidence, except a copy of the two page 1 Month Notice. Both parties confirmed that the landlord served the tenant with the submitted 5 page documentary evidence on January 13, 2017 in person. As both parties have confirmed receipt of the submitted documentary evidence provided by the other party, I am satisfied that both parties have been properly served as per section 88 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant with a 1 Month Notice to End Tenancy (the 1 Month Notice) dated December 22, 2016 for Cause in person. The tenant argues that he received the 1 Month Notice on December 23, 2016 and the landlord argues that the 1 Month Notice was served on December 22, 2016. The landlord is unable to provide any proof of service. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2017 and that it was being given for:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- 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.
- Jeopardize a lawful right or interest of another occupant or the landlord.

Both parties confirmed the content of the reasons for cause noted on the 1 Month Notice.

The landlord stated that the tenant's roommates have filed complaints that the tenant has attacked and threatened them. The landlord reported that the tenant's roommate is afraid that he might attack or kill him when he is sleeping. The tenant disputes the claims of the landlord stating it has been the other tenant who has attacked him. The landlord relies upon:

A "Untitled" typed "Tenants Complain History" by the landlord detailing 3 incidents of complaint by the other tenants.

A printout of an email, with no date of sources with a note added (landlord stated it is a text message from one of the tenants).

A 11 point handwritten notation by the landlord of "Tenant Complains".

Both parties have confirmed that no complaints/reports have been made to the police.

Analysis

Section 47 (4) of the Act states that a tenant may dispute a notice under this section by making an application for dispute within 10 days after the date the tenant receives the notice. In this case, the tenant argues that he received the 1 Month Notice dated December 23, 2016 and the landlord argues that the 1 Month Notice was served on December 22, 2016. The tenant confirmed that he received the 1 Month Notice on December 23, 2016, yet filed his application for dispute on January 4, 2017. The 10 day period after receiving the 1 Month Notice on December 23, 2016 would fall on January 1, 2017. An extension of this date based upon the next business day in which the office would be open falls on January 3, 2017. The tenant stated that he was having medical illness issues, but the Residential Tenancy Branch File shows that the tenant was advised that as of the date he applied he would require an amendment to his application seeking MT (more time to make an application for dispute). The tenant confirmed he was aware of this, but chose not to amend the application. The tenant was cautioned that without an exception being made that section 47(5) of the Act would apply. I find that the tenant having been made aware of the requirement for more time failed to make an application for more time and as such an extension cannot be considered.

Section 46(5) of the Act states that if a tenant who has received a notice under this section does not make an application for dispute resolution within the allowed 10 days is conclusively presumed to have accepted that the tenant was at an end and must vacate the rental unit by that date. In this case, the tenant's application to cancel the 1 Month Notice dated December 22, 2016 is dismissed.

The landlord is granted an order of possession pursuant to section 55 of the Act as the 1 Month Notice dated December 22, 2016 is upheld.

Conclusion

The tenant's application is dismissed.

The 1 Month Notice dated December 22, 2016 is upheld. The landlord is granted an order of possession effective on January 31, 2017.

The landlord must serve the tenant with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

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 27, 2017

Residential Tenancy Branch