



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for orders as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 of the *Act*;
- to have the landlord comply with order made under section 62 of the *Act*; and
- a return of the filing fee from the landlord pursuant to section 72 of the *Act*.

The tenant attended the hearing while the landlord did not. The tenant was given full opportunity to be heard, to present her sworn testimony and to make submissions and present evidence under oath.

The tenant stated that she was served with a 1 Month Notice on December 29, 2016. This notice was affixed to her front door. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the 1 Month Notice on December 29, 2016.

At the outset of the hearing, the tenant expressed some concern around the validity of the 1 Month Notice with which she was served. She noted that despite displaying the same address, the name appearing on the 1 Month Notice under the heading of Landlord was different than the landlord with whom she entered the tenancy agreement.

The tenant testified that she served the landlord named on the 1 Month Notice, in person on January 11, 2017 with her notice of Dispute Resolution and her evidentiary package. I accept that the landlord was properly served by the tenant with the Evidentiary and Application for Dispute Resolution hearing package (“Application for Dispute”) as per sections 88 and 89 of the *Act*.

I note that the tenant's application for dispute resolution was not received by the *Residential Tenancy Branch* nor was it served on the landlord within ten days of the issuance of the 1 Month Notice. The tenant testified that she was in Spain with her boyfriend caring for his ailing father. The tenant returned to Vancouver on January 10, 2017 and served the landlord in person the following day. Pursuant to section 66(1) of the *Act*, I am extending the time limit established by this *Act* to allow the tenant to proceed with this application.

Issue(s) to be Decided

- Should the landlord's 1 Month Notice be cancelled? If not, should an Order of Possession be issued for cause?
- Should the landlord be directed to comply with the *Act* pursuant to section 62?
- Is the tenant entitled to a return of the filing fee?

Background and Evidence

The tenant provided testimony and written evidence that the tenancy in question began in February 2009. She stated that on October 22, 2015 she signed a 2 year fixed-term lease set to expire October 21, 2017. Rent is currently \$1,600.00 and a security deposit of \$675.00 continues to be held by the landlord.

On October 3, 2016 the tenant received a letter from the property management company noting that she is alleged to be in violation of the Strata Corporation's Bylaws for causing a disturbance to the neighbouring units between 6:00 A.M. and 7:00 A.M. on September 24, 2016. On December 29, 2016 the tenant received the 1 Month Notice for Cause based on *adversely affecting the quiet enjoyment of another occupant*.

Analysis – Order of Possession

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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the 1 Month Notice. Because the landlord did not attend the hearing I find the landlord has failed to satisfy the burden of proof and I therefore allow the tenant's application to cancel the 1 Month Notice.

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application pursuant to section 72 of the *Act*.

Analysis – Order to Comply with the *Act*

The tenant explained that she included an application pursuant to section 62 of the *Act* with her application for dispute resolution because she felt that the landlord had made repeated attempts to evict her. As no specific requests were made concerning how the tenant would like the landlord to be ordered to comply with the *Act*, this portion of the tenant's application is dismissed.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary order of **\$100.00** in the tenant's favour, which allows the tenant to recoup the filing fee of this application. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. The tenant may also choose to withhold \$100.00 from a future monthly rent payment in order to implement this monetary award.

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: February 1, 2017

Residential Tenancy Branch