



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC, FF

Introduction

This is the tenants' application pursuant to s. 47(4) of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause dated December 22, 2016 with an effective date of January 31, 2017 (the "1 Month Notice"). The tenants also seek return of the filing fee.

The landlord attended the hearing. The tenants did not.

The landlord testified that she had not been served with the tenants' application or notice of hearing. However, she attended at this hearing after having been advised by the Residential Tenancy Branch (the "RTB") that the tenants' had filed the application. The landlord had called the RTB in the process of bringing her own application for an order of possession and return of the filing fee, based on the same 1 Month Notice.

The landlord filed her own application on February 3, 2017. In that application she seeks an order of possession based on the 1 Month Notice, as well as return of the filing fee.

The landlord testified that she served the tenants with her application and the notice of hearing setting the application down for March 7, 2017 by sending an application package on February 9, 2017 by registered mail. The file number for the landlord's application is reproduced for ease of reference on the cover page of this decision.

Issues to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to return of their filing fee?

If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord testified that she sent the 1 Month Notice to the tenants by registered mail on December 29, 2017. The tenants' application to dispute the 1 Month Notice acknowledges receipt of the 1 Month Notice on January 5, 2017.

The landlord also testified that she understands that the rental unit in question is still occupied and that the tenants have paid rent for February, 2017.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause by giving notice on a date that is not earlier than one month after the date the notice is received and the day before the month that rent is payable.

The landlord testified that she sent the 1 Month Notice by registered mail on January 29, 2017. By operation of section 90 of the Act the tenants are deemed to have been served 5 days after mailing. However, the tenants' acknowledgement of service in their application indicates that the tenants received the 1 Month Notice on January 5, 2017. I find that the tenants received the 1 Month Notice on January 5, 2017, with the result that the corrected effective date of the 1 Month Notice, pursuant to s. 53 of the Act, is February 28, 2017.

I further find that the 1 Month Notice complies with the requirements set out in s. 52 of the Act.

Section 47(4) of the Act allows a tenant to dispute a notice to end tenancy for cause by applying for dispute resolution within 10 days after receipt of the notice. The tenants here have done so. However the tenants have not attended at their own application to dispute the 1 Month Notice.

As the tenants did not attend their own hearing, I dismiss the tenants' application, without leave to reapply.

Section 55 provides that if a tenant applies to dispute a notice to end tenancy and the application is dismissed, the landlord receives an order of possession if the notice complies with s. 52. As I have found that the 1 Month Notice complies with s. 52, and as I have dismissed the tenants' application, I grant an order of possession effective February 28, 2017, the corrected effective date of the 1 Month Notice.

Conclusion

The tenant's application is dismissed.

As they were unsuccessful the tenants are not entitled to the return of their filing fee.

I grant an order of possession to the landlord effective at 1:00 p.m. on February 28, 2017. Should the tenants 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: February 15, 2017

Residential Tenancy Branch