



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNC OPC MNDC RR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order allowing the tenant to reduce rent for repairs pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application

with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on August 1, 2013 with a current monthly rent of \$736.00 payable on the 1st day of each month.

On December 23, 2016 the landlord served the tenant with the 1 Month Notice to End Tenancy by posting a copy to the door of the rental premises. The tenant acknowledged receiving the Notice on December 24, 2016.

The tenant's application to cancel the 1 Month Notice was filed on January 5, 2017. The tenant's application did not include a request to extend a time limit established under the Act.

Analysis

I accept the testimony of the landlord and the tenant and I find that the tenant received the 1 Month Notice on December 24, 2016.

Pursuant to section 47(4) of the *Act*, the tenant may make a dispute application within ten days of receiving the 1 Month Notice. As the tenant received the 1 Month Notice on December 24, 2016, the tenant's application should have been filed on or before January 3, 2017. The tenant's application was not filed until January 5, 2017. In accordance with section 47(5) of the *Act*, as the tenant failed to take this action within ten days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the 1 Month Notice, January 30, 2017.

Pursuant to section 66 of the *Act*, the director may extend a time limit established by this Act only in exceptional circumstances. The tenant did not make an application to request an extension of a time limit or provide any argument or evidence in support of any exceptional circumstances which prevented him from filing on time.

The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the tenant had already filed an application to dispute the 1 Month Notice, the landlord did not need to file its own application on the same issue. Therefore, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 02, 2017

Residential Tenancy Branch