



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, MT, CNC

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the “Act”). The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) and for more time to make the application. The landlord applied for an order of possession based on the 1 Month Notice and return of the application filing fee.

The landlord and a building manager attended the hearing and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

As the tenant did not attend, service of the landlord’s application and the notice of hearing was considered. The building manager provided affirmed testimony that he personally served the tenant with these materials on May 1, 2017. I accept that the tenant was duly served with the landlord’s application and notice of hearing on May 1, 2017. I also note that the tenant’s own application was scheduled for hearing at the same time as the landlord’s application.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 1 Month Notice?

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

According to the landlord’s affirmed and undisputed testimony, this tenancy began on June 1, 2012. This is a month to month tenancy. Rent is \$694.57 monthly and is due

on the first of the month. A security deposit of \$337.50 was paid at the start of the tenancy and remains in the landlord's possession.

The building manager testified that he personally served the tenant with the 1 Month Notice on March 30, 2017. A Proof of Service document confirming the same, signed by the tenant, was also in evidence. In his own application, dated April 12, 2017, the tenant indicates that he received the 1 Month Notice on March 29, 2017.

The landlord advised that the tenant has not paid rent for May.

Analysis

Section 47 of the Act allows a landlord to end a month to month tenancy for cause by giving notice effective on a date not earlier than 1 month after the date the tenant receives the notice, and the day before the day in the month that rent is payable.

Section 47(4) allows a tenant to apply to dispute such a notice within 10 days of receipt. The tenant has applied to dispute the 1 Month Notice. Although he has not done so within 10 days of receiving it, he has also applied for an extension of time.

However, the tenant has not attended at the hearing of his application. He has thus offered no basis for extending the 10 day time limit or cancelling the 1 Month Notice. Accordingly, the tenant's application to cancel the 1 Month Notice is dismissed without leave to reapply. The landlord's 1 Month Notice is upheld. This tenancy ended on April 30, 2017, the effective date of the 1 Month Notice.

Section 55 of the Act requires that I grant an order of possession where a tenant's application to cancel a notice to end tenancy is dismissed or the landlord's notice is upheld, provided the notice complies with s. 52. I find that the 1 Month Notice complies with s. 52. Accordingly, I grant the landlord an order of possession effective two (2) days from the date of service.

Conclusion

The tenant's application is dismissed. The landlord's application is allowed and the 1 Month Notice is upheld.

I grant an order of possession to the landlord effective two (2) days from the date of service. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

As the landlord's application is successful, I grant the landlord the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) and **I authorize the landlord to retain \$100.00 from the security deposit in full satisfaction of the \$100.00 filing fee.** The balance of the security deposit must be dealt with in accordance with the Act.

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: May 19, 2017

Residential Tenancy Branch