



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESCANA PROPERTIES INC. AND PARAGON REALTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF, CNC

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

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

The tenant's applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and confirmed receipt of both the landlords' and the tenant's notice of hearing package and the submitted documentary evidence. Neither party raised any service issues. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am sufficiently satisfied that both parties have been served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Is the tenant entitled to an order cancelling the 1 Month Notice?

Are the landlords entitled to a monetary order for recovery of the filing fee?

Is the tenant entitled to a monetary order for recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Neither party submitted a copy of the signed tenancy agreement.

Both parties confirmed that the landlord served the tenant with the 1 Month Notice. The 1 Month Notice sets that it was being given as:

- *the tenant is repeatedly late paying rent.*

The notice also displays within the details of cause:

Was late paying rent on Jan. April, May and June of 2017. Received two, 10 Day Notices to End Tenancy for Unpaid Rent in 2017.

Has show a past history of late payments: Feb & April 2016, Jan, June & Sept 2015

The tenant has submitted an incomplete copy of the 1 Month Notice which fails to disclose a signature or date of the landlord. It provides for an effective end of tenancy date of July 31, 2017 and service by posting it to the rental unit door on June 15, 2017.

The landlords have submitted a copy of a completed copy of the 1 Month Notice which shows that the landlord sign and dated the notice on June 12, 2017 and provides for an effective end of tenancy date of July 30, 2017 and service by posting it to the door and by mail on June 13, 2017.

The tenant provided testimony that this was the only copy provided by the landlord. The landlord disputed this claim stating that a completed copy was posted to the door and a separate copy was mailed to the tenant. The tenant argued that no other copies were provided to him. The landlord's witness, an agent provided affirmed testimony that he was present when a copy of the 1 Month Notice was posted to the door, but was unable to provide any details of what was on the notice.

Analysis

Section 52 of the Act states in part,

52 In order to be effective, a notice to end a tenancy must be in writing and **must**

(a) **be signed and dated by the landlord** or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, both parties have provided conflicting and contradictory evidence regarding the 1 Month Notice. The onus or burden of proof lies with the party who is making the claim. In this case, the burden lies with the landlord who claims serving a completed notice. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As such, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence of serving a completed 1 Month Notice. The 1 Month Notice for Cause displaying an effective end of tenancy date of July 31, 2017 and a service date of June 15, 2017 is cancelled. The merits of the notice were not considered.

Conclusion

The tenant's application to cancel the 1 Month Notice is granted. The tenancy shall continue.

The tenant is granted a monetary order for recovery of the \$100.00 filing fee.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court 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: August 04, 2017

Residential Tenancy Branch