



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC MNR FF CNC CNL MT MNR MNDC OLC 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;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice pursuant to section 49;
- various other remedies under the Act;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications.

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 Landlord's application for an order of possession and the tenant's application to cancel both the 1 Month and 2 Month Notices, I am exercising my discretion to dismiss the remainder of the issues identified in both the applications 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 1 Month and 2 Month Notice be cancelled? If no, is the landlord entitled to an order of possession for cause and/or landlord's use of property?

Is the landlord entitled to recover its filing fee?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began on July 1, 2016 and the current monthly rent is \$1140.00 payable on the 1st day of each month. The tenant paid a security deposit of \$550.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on August 1, 2017 the tenant was personally served with the 2 Month Notice. The reason for issuing the 2 Month Notice was that the landlord's son would be moving into the rental unit. The effective date as per the 2 Month Notice was September 30, 2017.

The tenant acknowledged receipt of the 2 Month Notice on this date. The tenant's application to dispute the 2 Month Notice was filed on August 18, 2017. The tenant testified that he was in the hospital from August 4, 2017 to August 14, 2017 so was late in filing his application. The tenant claims he brought evidence of the hospital records with him at the time of filing his application but he did not submit a copy of the records as evidence with his application. The tenant also contends the 2 Month Notice did not have a correct effective date as it was not served until August 1, 2017 versus July 31, 2017.

Analysis

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 provide any supporting documents such as hospital records in support of his application to extend a time limit established under the Act.

The tenant's request to extend a time limit to cancel the landlord's 2 Month Notice is dismissed.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. As the tenant received the 2 Month Notice on August 1, 2017, the tenant's application should have been filed on or before August 16, 2017. The tenant's application was not filed until August 18, 2017. In accordance with section 49(9) of the Act, as the tenant failed to make this application within fifteen days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the 2 Month Notice.

Pursuant to section 53 of the Act, if a landlord gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to the earliest date that complies with required Notice period. The Notice remains valid and the corrected effective date in this case is October 31, 2017.

The tenant's application to cancel the 2 Month Notice is dismissed. I find the notice complies with the form and content requirements of section 52 of the Act and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As the landlord has been granted an order of possession pursuant to the 2 Month Notice, the validity of the 1 Month Notice is a moot point.

As the landlord only filed for an order of possession based on the 1 Month Notice and not the 2 Month Notice, and I have not made any finding on the 1 Month Notice, the landlord's application to recover the filing fee for this application is dismissed.

As the tenant was not successful in this application, I find that the tenant is also not entitled to recover the filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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: November 07, 2017

Residential Tenancy Branch