



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC
 MT CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

This hearing also dealt with a cross-application filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking more time to file an Application to dispute a One Month Notice, and cancellation of the One Month Notice.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlords, who provided affirmed testimony. The Tenants did not attend. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlords testified on November 22, 2017, the Application and the Notice of Hearing were personally served on the Tenant C.G., who resides in the main unit of the

home, in the presence of a witness. The Landlords testified that the Tenants A.B. and A.F., who reside in the basement unit of the home, were not available, and as a result, the Application and the Notice of Hearing were sent individually to each of them by registered mail on November 22, 2017. In support of this testimony the Landlords provided the registered mail receipt numbers.

As a result of the above, I find that the Tenant C.G. was personally served the Application and the Notice of Hearing on November 22, 2017, and that the Tenants A.B. and A.F. were deemed served with the Application and the Notice of Hearing on November 27, 2017; five days after they were sent to them by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in the hearing in accordance with the Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be mailed to them at the address listed in their Application.

Preliminary Matters

The Landlords testified that the Tenant C.G. vacated the rental unit at the end of December, 2017. As a result, the Landlords withdrew their Application for an Order of Possession in relation to C.G.'s rental unit.

Issue(s) to be Decided

Are the Tenants entitled to more time to make their Application and to an Order cancelling the One Month Notice?

If the Tenants are unsuccessful in seeking to cancel the One Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The Landlords testified that the Tenants rent the basement of a larger home and the tenancy agreement in the documentary evidence before me indicates that the tenancy began October 15, 2017, and that rent in the amount of \$600.00 is due on the first day of each month.

The One Month Notice, dated October 29, 2017, has an effective vacancy date of December 1, 2017, and indicates that following reasons for ending the tenancy:

- The tenant has allowed an unreasonable number of occupants in a rental unit;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; and
- The tenant or a person permitted on the residential property by the tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Landlords stated that the One Month Notice was personally served on the Tenants' on October 30, 2017, and submitted a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the One Month Notice was served in the manner described above.

The Tenants did not appear at the hearing to present evidence in support of their Application.

Analysis

Although the Tenants filed an Application seeking to cancel the One Month Notice, the Tenants did not appear at the hearing to present evidence in support of their Application. As the Landlords, who are the Respondents named in the Tenants' Application, appeared at the hearing on time and ready to proceed, the Tenants' Application is dismissed without leave to reapply.

Section 55 of the *Act* states the following with regards to an Order of Possession for the landlord when a tenant is unsuccessful in cancelling a notice to end tenancy:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the above, I must now turn my mind to whether the One Month Notice issued by the Landlord complies with section 52 of the *Act* which states:

Form and content of notice to end tenancy

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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The One Month Notice submitted by the Landlords is signed and dated, states the effective date of the Notice and the grounds for ending the tenancy, and is in the approved form. Although the One Month Notice lists the street address, the Tenants reside in a basement unit of a larger home and the unit number for the Tenants' residence is not listed on the One Month Notice.

Section 68 of the *Act* states that if a notice to end tenancy does not comply with section 52, the director may amend the notice if satisfied that the person receiving the notice knew, or ought to have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. As the Tenants filed an Application seeking to dispute the One Month Notice, I am satisfied that they knew that it related to their rental unit and have amended the One Month Notice to include their unit address. As a result of the above, I therefore find that the One Month Notice

complies with section 52 of the *Act* and the Landlords are therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Conclusion

As the Tenants did not appear at the hearing to proceed with their Application or to present any evidence or testimony for consideration, the Tenants' Application seeking more time to file an Application and cancellation of the One Month Notice is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of the 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: February 1, 2018

Residential Tenancy Branch