



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who attended at the appointed time, ready to proceed. The Tenant did not attend. The Agent provided affirmed testimony and was given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter 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 Agent, copies of the decision and any Orders issued in favor of the Landlord will be e-mailed to her at the e-mail address provided in the hearing.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancelling the One Month Notice under the *Act*?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Background and Evidence

The One Month Notice in the documentary evidence before me, dated December 18, 2017, states that the reason for ending the tenancy is because the rental unit must be vacated to comply with a government order. The Agent testified that the One Month Notice was personally served on the Tenant on November 22, 2017, and in their Application, the Tenant acknowledged receiving the One Month Notice on this date.

The Agent testified that there is a clerical error on the One Month Notice and that the date signed should be November 18, 2017, not December 18, 2017. The Agent further stated that since the One Month Notice was served, the Tenant has continued to reside in the rental unit and although rent is \$600.00 a month, the Tenant has only made one rent payment in the amount of \$375.00.

The Tenant applied to cancel the One Month Notice; however, they did not appear at the hearing of their own Application to provide any evidence or testimony.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on November 22, 2017, the date it was personally served on them.

As the Tenant failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply. 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 One Month Notice in the documentary evidence before me is signed by the Landlord, gives the address of the rental unit, states the grounds for ending the tenancy, and is in the approved form. Although the One Month Notice is dated as required under section 52 of the *Act*, the Agent testified in the hearing that the date noted on the One Month Notice is a clerical error and provided the correct date. I have amended the One Month Notice accordingly.

I also note that the One Month Notice does not contain an effective date. Section 53 of the *Act* states that incorrect effective dates are automatically changed to comply with the required notice period. Section 68 of the *Act* also 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. Section 47 of the *Act* states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As the Tenant acknowledged in their Application that they received the One Month Notice on November 22, 2017, and the Agent testified that rent was due on the first day of each month, I find it reasonable to conclude that the Tenant ought to have known that the effective date of the One Month Notice was December 31, 2017. As a result, I amend the One Month Notice to include an effective date of December 31, 2017.

Based on the above, I find that the One Month Notice is amended to comply with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the One Month Notice has passed and the Agent testified that the Tenant has not paid rent in several months, the Order of Possession will be effective two days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **Two Days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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: February 15, 2018

Residential Tenancy Branch