



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC FF

Introduction

This hearing was convened in response to an application by the tenant dated February 07, 2018 pursuant to the *Residential Tenancy Act* (the Act) for more time to dispute a Notice to End and if successful to cancel the landlord's Notice to End Tenancy for Cause dated January 15, 2018. The tenant also applied for repairs to the unit.

Both parties participated in the teleconference hearing. At the outset of the hearing the landlord confirmed receiving the application of the tenant and their evidence. The landlord submitted a copy of the tenancy agreement. I have reviewed all testimony and all admissible evidence. However, only the evidence *relevant* to the issues and findings in this matter are described in this Decision. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

1). The Residential Tenancy Rules of Procedure state that for disputes to be combined on an application they must be related. I find that that the tenant's request for repairs are not sufficiently related to the main issue, which is to cancel the Notice. For this reason, I dismiss all other claims the tenant has placed on their application with leave to reapply.

2). *The tenant requests for **more time** to make their application to dispute the landlord's 1 Month Notice to End for Cause dated January 15, 2018, having made application to dispute it February 07, 2018.*

The parties confirmed to me that the tenancy agreement calls for the payable rent of \$600.00 to be paid in advance on the 1st of each month.

Both parties provided evidence the tenant was issued a 1 Month Notice to End Tenancy for Cause which the tenant testified they personally came into possession or found in their rental unit on January 24, 2018. The landlord testified the Notice was posted on the tenant's door. The tenant testified the Notice was left for them in the unit by an acquaintance occupying the rental unit during the tenant's temporary absence. The tenant confirmed to me the form and content and all particulars of the Notice to End inclusive of page 2 of the Notice indicating the reason(s) for the Notice pursuant to Section 47(1)(b) [*the tenant is repeatedly late paying rent*] and all the ancillary information respecting the Notice. The tenant further testified their familiarity with the Notice form having previously received a 1 Month Notice to End for Cause in October 2017 by the previous owner/landlord.

The tenant testified that following receipt of the Notice they were mindful of the information in the Notice and set out to inform themselves of their rights. The tenant also testified, confirming that in respect to the Notice, they did not satisfy the rent for November 2017, subsequently paid the rent for December 2017 late along with the rent for November, and determined not to pay the rent for January 2018 because the landlord did not attend to certain repairs.

I accept that the tenant came into possession of the landlord's Notice to End on January 24, 2018. I accept the evidence of both parties confirming to me that the Notice to End of this matter complies with **Section 52** of the Act as to the form and content of the Notice.

I find that pursuant to **Section 71(2)(b)** of the Act the 1 Month Notice to End dated January 15, 2018 has been sufficiently served for the purposes of the Act on January 24, 2018. The tenant was legally required, as informed; to dispute the Notice within 10 days of receiving it however did not do so. Having requested more time to make their application I find that pursuant to **Section 66** of the Act - **Director's Orders: changing time limits**, the tenant has not presented evidence supporting *exceptional circumstances* for filing their application to dispute the landlord's Notice to End later than legally required. In the process the tenant effectively confirmed the validity of the landlord's Notice to End.

Resulting from the above, I must **dismiss** the tenant's application for more time to make their application to dispute the landlord's Notice in this matter.

Issue(s) to be decided

Should the Notice to End of this matter be cancelled?
Is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence provided in this matter is that the tenant failed to pay the rent when due, or not at all, in the months of November, December 2017 and January 2018. As a result the landlord issued a 1 Month Notice to End for Cause for repeated late payment of rent which the tenant applied to dispute 14 days after receiving it.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

I have reviewed and reflected upon all the relevant submissions to this matter. On the preponderance of all the relevant evidence of the parties and on balance of probabilities, I find as follows.

It must be noted that **Section 26** of the Act states that, *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Pursuant to **Section 47(4)** of the Act the tenant had 10 days to dispute the Notice to End of this matter. The tenant did not apply for Dispute Resolution within the legally mandated time to do so and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 31, 2018, with the further result their application is **dismissed**.

I find the landlord's Notice to End complies with the form and content required by **Section 52** of the act and is valid. **Section 55(1)** of the Act states that if I dismiss the tenant's application or uphold the landlord's Notice to End I must grant the landlord an Order of Possession. On this basis, as the effective date of the Notice has passed the landlord has established an entitlement to an **Order of Possession** effective 2 days from when served.

Conclusion

The tenant's application to cancel the landlord's Notice to End has been dismissed. Any portion of the tenant's application in this matter *remaining relevant* is further dismissed with leave to reapply.

I grant the landlord an Order of Possession **effective 2 days from the day it is served on the tenant**. The tenant must be served with the Order of Possession. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding.

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: April 11, 2018

Residential Tenancy Branch