



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LAT, LRE, FFT, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an order restricting or setting conditions on the Landlords right to enter the rental unit, authorization to change the locks and recovery of the filing fee. It also dealt with an Amendment to an Application for Dispute Resolution (the “Amendment”) seeking cancellation of a One Month Notice to End Tenancy for Cause (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 agent for the Landlord (the “Agent”) and the witness for the Landlord (the “Witness”). Although the Agent and the Witness attended the hearing on time and ready to proceed, neither the Tenant nor an agent for the Tenant appeared. 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 Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) and presented by the parties in the hearing. 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 them at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing it was identified that the name listed for the Landlord on the Application and Amendment is not the correct legal name for the Landlord. The Agent confirmed that the rental unit is owned by a numbered corporation which does business under another name and provided me with the correct spelling for both company names. The Application and Amendment were therefore amended to show the correct legal name for the Landlord.

Preliminary Matter #2

Although a witness for the Landlord was in attendance at the start of the hearing, they were excluded from the proceedings while the Agent provided evidence and testimony for my consideration. The Witness was not called upon to provide any evidence or testimony for my consideration.

Preliminary Matter #3

Rule 7.1 of the Rules of Procedure states that a dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Given that both the Landlord and I attended the hearing on-time and ready to proceed, the hearing commenced as scheduled despite the absence of the Tenant.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of 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 of the *Act*?

Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit and authorization to change the locks?

Is the Tenant entitled to the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Agent testified that that the Tenant has resided in the property for many years on a month-to-month tenancy and that rent in the amount of \$1,050.00 is due on the first day of each month.

The One Month Notice in the documentary evidence before me, dated May 16, 2018, has a vacancy date of June 30, 2018, and states that the reason for ending the tenancy is because the Tenant or a person permitted on the property by the Tenant, has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant and because the Tenant knowingly gave false information about the residential property to a prospective tenant or purchaser viewing the residential property.

The Agent testified that the One Month Notice was posted to the door of the Tenant's rental unit on May 16, 2018.

Although the Tenant sought an order restricting or setting conditions on the Landlord's right to enter the rental unit, authorization to change the locks, cancellation of a One Month Notice and recovery of the filing fee, neither the Tenant nor an agent for the Tenant attended the hearing to provide any evidence or testimony for my consideration.

The Agent testified that although a rent cheque for July was received, it was never cashed as the Tenant was supposed to vacate June 30, 2018. The Agent stated that to his knowledge, the Tenant still resides in the rental unit and requested a two day Order of Possession.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the One Month Notice on May 19, 2018.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party, or dismiss the Application with or without leave to reapply. As neither the Tenant nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration, the Tenant's Application is therefore dismissed in its entirety without leave to reapply.

Section 55 of the *Act* states the following with regards to the issuance of an Order of Possession to a landlord when a tenant's Application seeking cancellation of a Notice to End Tenancy is dismissed:

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 in the documentary evidence before me is signed and dated, gives the address of the rental unit, states the effective date of the One Month Notice and the reasons for ending the tenancy, and is in the approved form. As a result, I find that the One Month Notice complies 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 vacancy date of the One Month Notice has passed, and the Agent testified that rent for July has not been paid as the rent cheque was never cashed, 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 and 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: July 5, 2018

Residential Tenancy Branch