



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FFT
 OPC, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking more time to make an application seeking cancellation of a Notice to End Tenancy, cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Landlord under the *Act*, seeking an Order of Possession based on the One Month Notice as well as a Monetary Order and retention of the security deposit for unpaid rent and recovery of the filing fee.

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 Landlord, who provided affirmed testimony. The Tenants did not attend. The Landlord was 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 Landlord testified that the Application and Notice of Hearing were personally served on each of the Tenants shortly after receiving them from the Residential Tenancy Branch (the “Branch”) on or about May 28, 2018. Further to this, I note that the Tenants filed their own Application which was set to be heard at the same date and time. Based on the above, I find that the Tenants were served with the Application and the Notice of Hearing on or about May 28, 2018, by the Landlord and that in any event, they were aware of the date and time of the hearing as a result of their own Application.

I have reviewed all evidence and testimony before me that was accepted for consideration in these matters 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 Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address listed in their Application.

Preliminary Matters

Preliminary Matter #1

During the hearing I identified that the Address listed for the Landlord and the Tenants was the same. As a result, I must first turn my mind to whether I have jurisdiction to hear these matters prior to assessing the merits of either Application.

The Landlord testified that the Tenants live in a self-contained secondary suite in the basement of the home in which he lives. Based on the undisputed testimony of the Landlord, I find that the living situation is not one of shared accommodation under section 4 of the *Act* and I therefore accept jurisdiction to hear and decide these matters.

Preliminary Matter #2

In the Application the Landlord sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice and the Landlord applied for an Order of Possession based on the One Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. As the monetary claim by the Landlord for unpaid rent and retention of the security deposit is unrelated to the One Month Notice, I therefore exercise my discretion to dismiss the Landlord's claim for unpaid rent and retention of the security deposit with leave to reapply.

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. Based on the above, and 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 Tenants.

Issue(s) to be Decided

Are the Tenants entitled to more time to make their Application seeking cancellation of the One Month Notice?

Are the Tenants entitled to cancellation of the One Month Notice?

Is the Landlord entitled to an Order of Possession?

Is either party entitled to the recovery of the filing fee?

Background and Evidence

The Landlord testified that he received notice from the municipality in which the rental unit is located stating that the rental unit must be immediately vacated as the suite is in violation of the bylaws as no occupancy permit has been issued. As a result, the Landlord testified that a One Month Notice was personally served on the Tenants on April 11, 2018. In support of this testimony, the Landlord provided a Proof of Service Document which appears to be signed by one of the Tenants, M.T.

The One Month Notice in the documentary evidence before me, submitted by the Tenants, is not signed or dated by the Landlord and states "N/A" in the sections of the One Month Notice detailing the address of the rental unit to be vacated. Although there is an "x" in the section stating that the One Month Notice was served in person, no date of service is listed. On page two of the One Month Notice, the Landlord checked the box indicating that the reason for ending the tenancy is because the rental unit/site must be vacated to comply with a government order. Further to this, in the details of cause section it states that the suite is illegal as confirmed by the municipality.

While the Landlord confirmed that he wrote "N/A" in the section intended for the address to be vacated as a result of the One Month notice, he stated this was simply a misunderstanding of the language of the form. The Landlord also submitted their own copy of page one of the One Month Notice. In the Landlord's copy, the address to be vacated still shows as "N/A", however, a signature and date are present. Although the Landlord testified that the rental address was also listed in the details of cause section, they did not submit their own copy of page two of the One Month Notice for my consideration in support of this testimony.

Neither of the Tenants nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

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 Tenants were served with the One Month Notice on April 11, 2018, the date the Tenant M.T. signed the Proof of Service acknowledging receipt of the One Month Notice.

Section 47 of *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the rental unit must be vacated to comply with an order from the federal, British Columbia, regional or municipal government authority.

Although the Tenants applied for more time to make an Application to dispute a Notice to End Tenancy as well as cancellation of the One Month Notice, 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 of the Tenants nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

Having made the above finding, I must now consider if the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which states the following with regards to an Order of Possession for the Landlord:

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.

As neither copy of the One Month Notice states the address to be vacated and the Landlord acknowledged that the copy served on the Tenants was not signed or dated, I therefore find that the One Month Notice is invalid as it does not comply with section 52 of the *Act*.

Based on the above, and despite the fact that the Tenants' Application seeking cancellation of the One Month Notice has been dismissed, I cannot issue an Order of Possession. I therefore dismiss the Landlord's Application seeking an Order of Possession based on the One Month Notice and recovery of the filing fee without leave to reapply. I also order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Conclusion

With the exception of the Landlord's Application seeking compensation for unpaid rent and retention of the security deposit, which I have already dismissed with leave to reapply; all remaining claims from both parties are dismissed without leave to reapply.

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 9, 2018

Residential Tenancy Branch