



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LE GERS PROPERTIES INC. DBA SAND DOLLAR MANOR
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC, FFT

Introduction

This hearing was held pursuant to the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to cancel a 1 Month Notice to End Tenancy for Cause dated August 17, 2018 ("1 Month Notice") and to recover the cost of the filing fee.

The tenant, an agent for the tenant ("tenant agent"), an agent for the landlord ("agent"), a building manager for the landlord ("building manager") and a witness for the landlord who did not testify attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing and to ask questions.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2014 and reverted to a month to month tenancy after eight months. Monthly rent is due on the first day of each month.

The tenant confirmed that he was served on August 17, 2018 with the 1 Month Notice dated August 17, 2018. The tenant did not apply to dispute the 1 Month Notice until August 30, 2018. The 1 Month Notice lists two causes and includes details of the causes listed.

The agent for the tenant stated that he was not aware that the tenant only had 10 days to dispute the 1 Month Notice. The tenant did not apply for more time to make an application to dispute a notice to end tenancy.

Although a settlement agreement was discussed, the parties were unable to agree on a mutually settled agreement. The landlord did not dispute that money for use and occupancy was paid for October 2018.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47 of the *Act* applies and states:

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section **does not make an application for dispute resolution** in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.

[My emphasis added]

As the tenant confirmed that he received the 1 Month Notice on August 17, 2018 I find the tenant had until August 27, 2018 to dispute the 1 Month Notice. The tenant did not

file their application to cancel the 1 Month Notice until August 30, 2018 which is beyond the timeline permitted under section 47(4) of the *Act*. Therefore, pursuant to section 47(5) of the *Act* I find the tenant is conclusively presumed to have accepted that the tenancy ended on September 30, 2018, which was the effective vacancy date listed on the 1 Month Notice. As a result, I dismiss the tenant's application due to insufficient evidence, without leave to reapply.

Section 55 of the *Act* applies and states:

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.

[My emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I must grant the landlord an order of possession. As there is no dispute that money was paid by the tenant for use and occupancy of the rental unit for the month of October 2018, I grant the landlord an order of possession effective **October 31, 2018 at 1:00 p.m.** I find the tenancy ended on September 30, 2018 which was the effective vacancy date listed on the 1 Month Notice.

As the tenant's application failed, I do not grant the filing fee.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

I find the tenancy ended on September 30, 2018.

The landlord is granted an order of possession effective October 31, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 2, 2018

Residential Tenancy Branch