



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on a 1 Month Notice to End Tenancy for Cause dated June 6, 2018 ("1 Month Notice").

Two agents for the landlord ("agents") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agents testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on September 20, 2018 as the previous application was dismissed with leave to reapply. In support, the agents provided a registered mail tracking number which has been included on the cover page of this decision for ease of reference. According to the online Canada Post registered mail tracking website information, the item is listed as "item refuse by recipient". The *Act* does not permit a respondent to refuse service and section 90 of the *Act* deems that documents served by registered mail are deemed served five days after they are mailed. Therefore, I find the tenant was deemed served on September 25, 2018. As the tenant did not attend the hearing, and the agents confirmed that the tenant continues to occupy the rental unit, I find that the landlord's application is undisputed and unopposed by the tenant.

Preliminary and Procedural Matters

The agents confirmed the email address for the landlord at the outset of the hearing. The agents were advised that the landlord would receive the decision by email and that any applicable orders would be emailed to the landlord. The tenant shall receive the decision by regular mail.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until for 25 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. Pacific Time on Tuesday, October 9, 2018. The agents attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agents and I were the only ones who had called into this teleconference. The agents confirmed that they were not seeking the return of their filing fee.

Issue to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on June 1, 2008. Monthly rent is due on the first day of each month and no security deposit was requested by the landlord.

The agents testified that the tenant was served personally on June 6, 2018 with the 1 Month Notice alleging one cause and did not dispute the 1 Month Notice until filing a separate application on, the file number of which was included on the cover page of this decision ("tenant's application"). The effective vacancy date listed on the 1 Month Notice was July 31, 2018 which has passed and which was before September 21, 2018 which is the date of the tenant's application.

The agents stated that the tenant continues to occupy the rental unit and that the landlord was unable to confirm at the time of the hearing if a payment from the tenant had cleared for use and occupancy of the rental unit for the month of October 2018.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant did not dispute the 1 Month Notice within 10 days after being served with the 1 Month Notice on June 6, 2018. The effective vacancy date of the 1 Month Notice is listed as July 31, 2018. Section 47 of the *Act* indicates that when a tenant does not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I find the tenancy ended on July 31, 2018. I find the landlord has not reinstated the tenancy by accepting money for use and occupancy only since July 2018. I also find that section 66(3) of the *Act* applies:

Director's orders: changing time limits

66 (3) The director **must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.**

[My emphasis added]

The tenant applied on September 21, 2018 and that the tenant has requested more time to make an application to dispute a notice to end tenancy; the 1 Month Notice. The *Act* does not permit an arbitrator to extend the time beyond the effective date of the notice. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act* effective **two (2) days after service on the tenant.**

As the 1 Month Notice was not disputed within the permitted timeline under section 47 of the *Act*, I do not find it necessary to consider the reason stated on the 1 Month Notice. I find that the supporting letter from the landlord attached to the 1 Month Notice detailing the cause listed complies with section 52 of the *Act* and that the 1 Month Notice is a valid notice under the *Act*.

Conclusion

The landlord's application is fully successful.

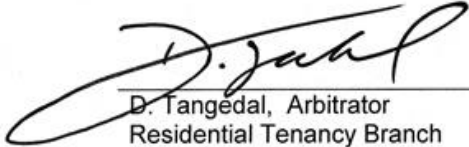
The tenancy ended on July 31, 2018. The landlord may wish to make the arbitrator aware of this decision at the future hearing scheduled to address the tenant's application that was not crossed with the landlord's application as it was filed late.

As the tenant continues to occupy the rental unit, the landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is not seeking the filing fee.

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 9, 2018



D. Tangedal, Arbitrator
Residential Tenancy Branch