



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* (“the Act”) for:

- an order cancelling the landlord’s 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) pursuant to section 47 *Act*.

Only the respondent landlord attended the hearing. The landlord confirmed receipt of the tenants’ application for dispute after it was sent to her by way of Canada Post Registered Mail.

Issue(s) to be Decided

Can the tenants’ cancel the landlord’s 1 Month Notice? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

Only the landlord attended the hearing. The landlord confirmed that a 1 Month Notice to End Tenancy for Cause was served to the tenants on August 19, 2018. The landlord included a copy of this notice with her evidentiary package. The reasons cited on the 1 Month Notice were listed as follows –

The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord’s property at significant risk.

The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property; has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The tenant knowingly gave false information about the residential property to a prospective tenant or purchaser viewing the residential property

The rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal authority

The tenant has not complied with an order of an arbitrator within 30 days of the later of the following dates; the date the tenant receives the order or the date specified in the order for the tenant to comply with the order

The landlord explained that one of the named tenants had recently been arrested after having violated a court order not to attend the premises. The landlord said the tenants were frequently subject to police intervention and had been arrested on a number of occasions.

Analysis

While the landlord attended the hearing by way of conference call, the applicant tenants did not, although I waited until 11:10 A.M. in order to enable the applicant tenants to connect with this teleconference hearing scheduled for 11:00 A.M. The landlord who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Following opening remarks, the landlord explained the tenants were still in occupation of the rental unit and that the landlord was still pursuing the Notice to End Tenancy served on the tenant on August 9, 2018.

Section 55(1) of the Act reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(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.

A copy of the landlord's 1 Month Notice to End Tenancy for Cause was supplied to the hearing as part of the landlord's evidentiary package. Based on a review of the 1 Month Notice for Cause entered as written evidence and the landlord's undisputed testimony, I find the landlord's 1 Month Notice complies with section 52 of the Act. While the notice was not given to the tenants on the current and approved RTB#33 form, I find the tenants' were sufficiently aware of the issues which led to the issuance of a notice to end tenancy and adequately applied to dispute this notice within the allowable time frame.

The tenants' failure to attend this hearing and present any evidence or testimony speaking to their application leads me to order that their application to cancel the 1 Month Notice is dismissed without liberty to reapply. I am dismissing without leave to reapply because I find the tenants would have been aware of the hearing as they applied to dispute the notice. Furthermore, the landlord's attended the hearing and was therefore made aware of the hearing date and time.

Based on my decision to dismiss the tenants' application for dispute resolution and my finding that the landlord's 1 Month Notice complies with section 52 of the Act, I find that this tenancy was to end on the corrected effective date of the 1 Month Notice, in this case August 31, 2018. As the tenants are still in occupation of the rental unit, the landlord is therefore entitled to a 2 day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. Should the tenants fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

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: October 1, 2018

Residential Tenancy Branch