



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, FFL, CNC, CNL, MT, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of three One Month Notices to End Tenancy, pursuant to section 47;
- cancellation of the Two Month Notice to End Tenancy, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for end of employment, pursuant to sections 48 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenant attended the first hearing but did not attend the reconvened hearing, although I left the teleconference reconvened hearing connection open for 31 minutes in order to enable the tenant to call into this reconvened teleconference hearing scheduled for 11:00 a.m. The landlords 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 landlords and I were the only ones who had called into this teleconference.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Issue(s) to be Decided

1. Are the tenants entitled to more time to cancel a Notice to End Tenancy, pursuant to section 66 of the *Act*?
2. Are the tenants entitled to cancellation of the One Month Notices to End Tenancy, pursuant to section 47 of the *Act*?
3. Are the tenants entitled to cancellation of the Two Month Notice to End Tenancy, pursuant to section 49 of the *Act*?
4. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
5. Are the landlords entitled to an Order of Possession for end of employment, pursuant to sections 48 and 55 of the *Act*?
6. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Preliminary Issue- Tenant's Application

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I find that since the tenant did not attend the reconvened hearing, her application is dismissed without leave to reapply.

Background/Evidence

The landlords testified that they posted a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of October 31, 2018 (the "Two Month Notice") on the tenant's door on August 6, 2018. The tenant confirmed receipt of the Two Month Notice on August 6, 2018. The Two Month Notice was entered into evidence.

The landlords testified that they posted a One Month Notice to End Tenancy for End of Employment with an effective date of September 7, 2018 (the "First One Month Notice") on the tenant's door on August 6, 2018. The tenant confirmed receipt of the First One Month Notice on August 6, 2018. The First One Month Notice was entered into evidence.

At the reconvened hearing the landlords provided undisputed testimony that the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of September 22, 2018 (the "Second One Month Notice") on August 21, 2018. The Second One Month Notice was entered into evidence.

At the reconvened hearing the landlords provided undisputed testimony that they posted a One Month Notice to End Tenancy for Cause with an effective date of October 5, 2018 (the "Third One Month Notice") on the tenant's door on September 4, 2018. The Third One Month Notice was entered into evidence.

Analysis

I find that service of the Two Month Notice was effected on the tenant on August 6, 2018 in accordance with section 88 of the *Act*.

I find that service of the First One Month Notice was effected on the tenant on August 6, 2018 in accordance with section 88 of the *Act*.

I find that service of the Second One Month Notice was effected on the tenant on August 21, 2018, in accordance with section 88 of the *Act*.

I find that service of the Third One Month Notice was deemed effected on the tenant on August September 7, 2018, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Upon review of the Two Month Notice, the First One Month Notice, the Second One Month Notice, and the Third One Month Notice (the "Notices to End Tenancy"), I find that all of the Notices to End Tenancy conform to the form and content requirements under section 52 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. I find that the corrected effective date of the First One Month Notice is September 30, 2018. I find that the corrected effective date of the Second One Month Notice is September 30, 2018. I find that the corrected effective date of the Third One Month Notice is October 31, 2018.

Section 55 of the *Act* states that 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.

I find that since the Notices to End Tenancy comply with section 52 of the *Act* and the tenant's application to cancel the Notices to End Tenancy was dismissed; the landlords are entitled to an Order of Possession. As all of the effective dates on the Notices to End Tenancy have passed, I find that the landlords are entitled to a two-day Order of Possession, pursuant to section 55 of the *Act*.

As I have granted the landlords an Order of Possession pursuant to section 55 of the *Act*, I decline to consider the landlord's application for an Order of Possession for End of Employment, pursuant to section 48 of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I order the tenant's application dismissed without liberty to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlords in the amount of \$100.00.

The landlords are 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 Small Claims Division of the Provincial Court 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: November 20, 2018

Residential Tenancy Branch