



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for September 18, 2018, I had allowed the landlord's adjournment application as counsel was just recently retained and wanted more time to get instructions from his client. As the tenants were not opposed, the adjournment was granted.

The adjournment decision dated September 18, 2018 noted the requirements for service of the hearing package and evidence. Counsel TF appeared in today's hearing on behalf of the landlord, and confirmed receipt of all hearing documents, and was ready to proceed with this matter.

While the landlord's counsel attended the hearing by way of conference call, the tenants did not. I waited until 9:50 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 am. The landlord's counsel was given a full opportunity to be heard, to make submissions and to call witnesses.

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The landlord's counsel submitted that the 1 Month Notice dated July 15, 2018, was personally served to the tenants on July 16, 2018. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order for the landlord to comply with the *Act*, regulation, or tenancy agreement?

Background and Evidence

TF confirmed in the hearing that the tenants are currently still residing at the rental suite. TF submitted that there is no written tenancy agreement for this month-to-month tenancy, but that monthly rent is currently set at \$1,200.00, payable on the first of each month. The tenants are still residing at the rental address.

The landlord issued the notice to end tenancy providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Counsel submitted that although renovations were mentioned by both parties, the main reason the 1 Month Notice was issued to the tenants was due to the fact that the home was deemed uninsurable by the insurance broker after an inspection in January of 2018.

Counsel submitted that the home was in such a state that the home posed a significant fire and safety risk to all occupants and the landlord that the insurance company declined to renew the landlord's homeowner insurance. Although the landlord did not submit written evidence for this hearing, counsel read an email during the hearing sent by the insurance broker, DM that indicated the insurance company's decision to not reinstate the landlord's insurance due to the conditions of the home.

Counsel submitted that the landlord had attempted to resolve the issue with the tenants, with no success. The home remains uninsured, and the landlord is concerned that the tenants have, and continue to, jeopardize the health and safety of all occupants, as well as the lawful right of the landlord.

Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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

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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 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.

In the absence of any submissions from the applicants in this hearing, I order the tenants' entire application dismissed without liberty to reapply.

A copy of the 1 Month Notice was submitted by the tenants for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Section 53 of the *Act* allows the effective date of the 1 Month Notice to be corrected.

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) 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.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in

the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 1 Month Notice, September 30, 2018. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenants' entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of September 30, 2018.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and 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: November 13, 2018

Residential Tenancy Branch