



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC AAT PSF

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*;
- an order for the landlord to allow access to the rental unit for the tenant or guests pursuant to section 30 of the *Act*; and
- an order that the landlord provide services or facilities required by the tenancy agreement or the *Act* pursuant to section 62 of the *Act*.

The landlord, who was the respondent in this matter, attended at the date and time set for the hearing of this matter. The landlord's wife G.R. assisted the landlord. The tenant, who was the applicant in this matter, did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

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 reapply.

Accordingly, in the absence of any testimony from the tenant in this matter, I order the tenant's application in its entirety dismissed without liberty to reapply.

Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

Only the first page of the written tenancy agreement was submitted into evidence by the landlord. This was the only evidence submitted by the landlord. The landlord testified that this month-to-month tenancy began October 2, 2018. The rental unit is located in the lower-level of the landlord's home, and consists of two bedrooms, one bathroom, a kitchen and living area. The current monthly rent is \$1,400.00 payable on the first of the month. The tenant paid a \$700.00 security deposit at the beginning of the tenancy, which continues to be held by the landlord.

A copy of the One Month Notice dated October 20, 2018, submitted into evidence, states an effective move-out date of November 15, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

Tenant has allowed an unreasonable number of occupants in the unit.

The landlord has not provided any details in the "Details of Cause" section of the notice.

The tenant filed an Application for Dispute Resolution on October 30, 2018 to dispute the One Month Notice.

The landlord testified that the tenant and her three minor children are the tenants on the tenancy agreement, however the tenant has allowed an adult male to move into the rental unit. The landlord testified that the male occupant resides with the tenant in the rental unit full-time, not as a guest, and accesses the laundry facilities.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this matter, I accept the landlord's testimony that the tenant was served the One Month Notice on October 20, 2018. The tenant filed an Application for Dispute Resolution within 10 days of receipt of the One Month Notice, in accordance with the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice to determine if it is compliant with the requirements of section 52 of the *Act*.

I find that the One Month Notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form. I note that the landlord erroneously selected the box for "Manufactured home site" instead of "Rental Unit" at the top of the form. I do not find this error invalidates the notice. The tenant, having received the One Month Notice, understood the nature of the notice and demonstrated this by filing an Application for Dispute Resolution against the notice. As such, pursuant to my authority under section 68(1)(b) of the *Act*, I amend the One Month Notice to correct this error as it is reasonable to do so in the circumstances.

I also note that the landlord did not repeat the tenant's address under the "Notice to End Tenancy" section of the form but left that section blank. However, the landlord did provide the address of the rental unit under the "Tenant Address" section of the form. As such, I find that the form provides the address of the rental unit as required by section 52 of the *Act*.

Pursuant to section 53 of the *Act*, as I have found that the tenant was served with the One Month Notice on October 20, 2018, the effective vacancy date of the notice automatically corrects to the earliest effective date allowed by the *Act*, which in this case is November 30, 2018.

Section 55(1) of the *Act* states that if a tenant makes an application to dispute a notice the arbitrator must grant an Order of Possession if the notice complies with the *Act* and the tenant's application is dismissed. As I have made a finding that the One Month Notice complies with section 52 of the *Act* and the tenant's application to the cancel the One Month Notice is dismissed due to the fact the tenant failed to attend the hearing to dispute the notice, the landlord must be granted an Order of Possession.

As the corrected effective vacancy date of the notice has passed, the Order of Possession is effective two days after service upon the tenant by the landlord.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply, and the One Month Notice is upheld as it meets the requirements of section 52 of the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. The landlord is 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 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: December 07, 2018

Residential Tenancy Branch