



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, PSF, MNDC

Introduction

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;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package, the submitted documentary evidence and the tenant's amendment to the application for dispute via Canada Post Registered Mail. The tenant confirmed receipt of the landlord's submitted documentary evidence. Neither party raised any other issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

Preliminary Issue(s)

Extensive discussions at the outset revealed that the tenant's requests for an order for the landlord to comply and an order for the landlord to provide services or facilities were made in error and that the tenant's primary issue other than the end of tenancy was a monetary claim for compensation for an unrelated issue. As such, I find that the

monetary claim to be unrelated to the request to cancel the 1 month notice and dismiss the monetary claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The hearing shall proceed on the tenant's request to cancel the 1 month notice.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Background, Evidence and Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on November 1, 2018 on a fixed term tenancy ending on October 31, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 27, 2018. The monthly rent is \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid on November 1, 2018.

On December 21, 2018, the landlord served the tenant with the 1 Month Notice by posting it on the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of January 31, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has caused extraordinary damage to the unit.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The details of cause listed on the notice states:

Please see attached 6 page letter which sets out the details of causes (signed and numbered) & 3 pages of attachments.

The landlord argued that the tenant has failed to apply for dispute within the allowed 10 day timeframe allowed under the Act. The landlord provided evidence that the 1 month notice dated December 21, 2018 was served upon the tenant by posting it to the rental unit door on December 21, 2018. All parties confirmed that the tenant applied for dispute of the 1 month notice on January 3, 2019 making it 13 days after receiving the notice.

The tenant argued that she has “no idea” when the landlord posted the 1 month notice on the door, but can confirm that she received it on December 22nd or the 23rd of 2018. The tenant argued that posting on the door dictates that she is deemed to have received the 1 month notice 3 days later on December 26, 2018 making her filing of the application for dispute 8 days which is within the allowed 10 day timeframe.

In reviewing the evidence of both parties I find that the application for dispute is confirmed as being filed on January 3, 2019 by the tenant. I accept the landlord's undisputed evidence that the 1 month notice was posted to the rental unit door on December 21, 2018 as the tenant cannot confirm when it was posted. However, the tenant argued that she did not receive the package until December 22nd or 23rd of 2018. I accept the tenant's assertion that she did not “receive” the 1 month notice until December 23, 2018. On this basis, I find that the tenant is deemed to have received the 1 month notice on December 23, 2018 as it is unnecessary to deem the 1 month notice served based upon section 90 of the Act as the tenant has confirmed receipt on December 23, 2018. Based on this date of December 23, 2018 of receiving the 1 month notice, the tenant filed for dispute on January 3, 2019, 11 days later, 1 day past the allowed 10 day limitation period. As such, I find that the tenant failed to file an application for dispute within the allowed time frame pursuant to section 47 (4) and is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice of January 31, 2019 as per section 47 (5) of the Act. The tenant's application is dismissed. The 1 month notice dated December 21, 2018 is upheld. The landlord is granted an order of possession to be effective 2 days after being served upon the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.
The landlord is granted an order of possession.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: February 6, 2019

Residential Tenancy Branch