



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The participatory hearing was held on March 15, 2019. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47 (the "Notice")

The Landlord's Agent (referred to as the "Landlord") and the Tenant both appeared at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord acknowledged receipt of the Tenant's application package. The Landlord sent her evidence by registered mail on February 28, 2019. Although the Tenant did not pick up the registered mail, pursuant to section 90 of the Act, I deem this evidence is served 5 days after it was mailed, on March 5, 2019.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant filed to dispute the Notice and uploaded a copy of this Notice for my review. This Notice, signed and dated by the Landlord on January 16, 2019, lists several grounds for ending the tenancy, and has an effective vacancy date of February 28, 2019.

The Landlord stated that she sent the Notice to the Tenant on January 16, 2019, by registered mail. The Landlord provided proof of service and registered mail tracking information. The Landlord stated that this package was never picked up by the Tenant, so she also photocopied it and left a copy on the Tenant's door on January 31, 2019. On the Tenant's application, she stated that she received the Notice on February 1, 2019. Then, at the hearing, the Tenant stated that she received the Notice on February 2, 2019. The Tenant also stated that there was more than one Notice. However, the Tenant only uploaded one Notice in this application for dispute, which was the Notice dated January 16, 2019, as stated above.

The parties each provided statements surrounding the Tenant's interactions with the property manager. The Tenant denies many of the allegations, including the characterizations of the events in the Landlord's written letters leading up to the Notice. The Landlord maintains that the Tenant is being rude, aggressive, and hostile towards the property manager, and has been warned several times by letter.

Analysis

I have reviewed all relevant documentary evidence and oral testimony. Although both parties provided different versions of events with respect to the issues behind the Notice, and why it was issued, I find it is not necessary to consider, resolve and summarize these contested issues in full, because I find the tenancy is ending for another reason, as laid out below:

First, I note that the Tenant stated that there was more than one Notice issued. However, she only disputed and uploaded one Notice, which is the one dated January 16, 2019. This is the only Notice I have considered in this hearing.

Next, I note the Landlord sent the Notice by registered mail on January 16, 2019. The Landlord addressed it to the Tenant at the rental unit address and provided proof of mailing. Pursuant to section 88 and 90 of the Act, I deem this Notice was served to the Tenant on January 21, 2019.

Section 47 of the Act states the following with regards to disputing a One Month Notice:

Landlord's notice: cause

- 47** (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The Tenant applied to dispute the One Month Notice on February 4, 2019, which is more than 10 days after she was deemed to have received the Notice. Based on the above, I find that the Tenant failed to dispute the Notice within the 10 days granted under section 47(4) of the *Act* and that the Tenant is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended.

As a result, the Tenant's Application to cancel the Notice is dismissed.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession, effective 2 days after service, given the effective date of the Notice has already passed.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: March 18, 2019

Residential Tenancy Branch