



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOMES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC LAT LRE**

Introduction

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

- An order to cancel a 1 Month Notice for Cause pursuant to section 47;
- An order to change the locks to the rental unit pursuant to section 31; and
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m.

The landlord attended the hearing and was 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 landlord and I were the only ones who had called into this teleconference.

Preliminary Issue

The tenant had misspelled the landlord's name on his application. In review of the tenant's evidentiary package and the landlord's, I confirmed the landlord's name was misspelled. In accordance with Rule 4.2, I amended the landlord's name to the one reflected on the cover page of this decision.

Preliminary Issue

The landlord advised the parties had signed a mutual agreement to end tenancy ("agreement") the night before this hearing. I determined it would not prejudice the tenant's application to cancel the landlord's eviction notice if I were to allow the landlord to submit a copy of the agreement in order to determine its validity. In accordance with Rule 3.19 of the Residential Tenancy Branch Rules of Procedure, the agreement was provided for my reference.

Background and Evidence

The tenant's application indicates he was served with the Notice on April 12, 2019. The Notice was posted to his door. The tenant filed to dispute the Notice on April 26, 2019.

The landlord advised the parties signed a mutual agreement to end tenancy with an effective date of July 1, 2019. A copy of the agreement was filed by the landlord during the hearing.

Analysis

I find the tenant to have been served with the Notice on April 15, 2019 in accordance with sections 89 and 90 of the Act. The tenant filed to dispute the Notice on April 26th, eleven days after being served. I find the tenant did not make his application for dispute resolution within ten days after the date he received the Notice. He is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice in accordance with sections 47(4) and 47(5) of the Act.

Further, Rule 7.3 of the Rules of Procedure provides 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. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenant did not attend the hearing which was scheduled for 11:00 a.m. and concluded at 11:15 a.m. As he did not attend, he did not present evidence regarding the merits of his claim for me to consider.

Consequently, I dismiss the tenant's application to cancel the Notice; change the locks to the rental unit, and to suspend the landlord's right to enter without leave to reapply.

As the tenant filed an application to dispute the Notice and it was dismissed, I order the landlord is entitled to an order of possession effective 1:00 p.m. on July 31, 2019 in accordance with section 55 of the Act and pursuant to the Mutual Agreement to End Tenancy.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an order of possession to the landlord effective 1:00 p.m. on July 31, 2019. Should the tenant or anyone on the premises 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: June 04, 2019

Residential Tenancy Branch