



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC FFT**

Introduction

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

- An order to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord attended the hearing represented by building manager, DV ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:05 a.m. to allow the tenants to call into the hearing scheduled for 11:00 a.m. 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 landlord testified that the tenants had misnamed the landlord as an individual while the tenancy agreement was made between the tenants and the named apartment building. In accordance with section 64(3)(c), I amended the landlord's name to the one reflected on the cover page of this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

A copy of the One Month Notice to End Tenancy for Cause ("Notice") dated April 17, 2019 was provided as evidence by the landlord. The effective date on the Notice was June 5, 2019. The reason for ending the tenancy was:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Tenant has been barbecuing on our wood frame building, endangering other tents. Tenancy agreement clearly states barbecuing is not permitted. [as written]

The landlord provided a proof of service document to show it was served on the tenants by attaching to the door of the tenant's rental unit on April 17, 2019. The tenants filed to dispute the Notice on May 20, 2019, more than one month after being served with the Notice.

The landlord provided undisputed testimony that she was advised by another occupant of the building that the tenants had moved out on July 5, 2019. The landlord reviewed video footage of the building for that date and confirmed the tenants had moved out on July 5th.

Analysis

I am satisfied the tenants were served with the Notice on April 20, 2019, the third day after it was attached to the door pursuant to sections 88 and 90 of the *Act*. The tenants applied to dispute the Notice more than a month after receiving it, on May 20th, contrary to section 47 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

- 3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- 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.

As the tenants did not file an application to cancel the Notice **within 10 days of receiving it**, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Moreover, Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend a dispute resolution hearing, the arbitrator may conduct the 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 tenants did not attend the hearing which was scheduled by conference call at 11:00 a.m. and concluded at 11:05 a.m. As they did not attend, they did not present evidence regarding the merits of their application to cancel the Notice for me to consider. Consequently, I dismiss the tenant's application without leave to reapply.

Pursuant to section 55, 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.

I have examined the landlord's notice and find that it complies with the form and content provisions of 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.

I grant an Order of Possession to the landlord. As the effective date on the Notice has passed, the Order of Possession is to take effect 2 days after service upon the tenants.

As the tenants were not successful in their claim, they will not recover their filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**.

Should the tenants 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: July 08, 2019

Residential Tenancy Branch