



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

On May 21, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing with S.W attending as his advocate. T.C. attended the hearing as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing package by registered mail on May 27, 2019 and T.C. confirmed that he received this package. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing package.

The Tenant advised that his evidence was served to the Landlord by placing it in his mailbox on June 21, 2019 and T.C. confirmed that he received this package. As this evidence was served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I accepted this evidence and will consider it when rendering this decision.

T.C. advised that his evidence was served to the Tenant by hand "last week". The Tenant advised that he received this evidence on July 5, 2019, that he had read it, reviewed it, and was prepared to respond to it. While this evidence was served late and not in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Tenant was prepared to respond to it, I accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that 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 Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2016 and that rent is currently established at \$1,145.00 per month, due on the first day of each month. A security deposit of \$550.00 was also paid.

All parties agreed that the Notice was served to the Tenant by being placed on his door on May 13, 2019 and the Tenant confirmed that he received the Notice. The reasons the Landlord served the Notice are because the “Tenant is repeatedly late paying rent”, the “Tenant or a 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, and/or put the landlord’s property at significant risk”, and the “Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.” The Notice indicated that the effective end date is July 15, 2019.

The parties provided testimony with respect to the reasons on the Notice; however, the topic of a settlement was brought up by the parties.

Settlement Agreement

The possibility of a settlement was raised, pursuant to Section 63(1) of the *Act*, which allows an arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written decision and make any necessary orders. I also explained that the written decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties engaged in a discussion on what would be an amenable settlement for both parties. The Landlord and the Tenant agreed as follows:

1. The Notice of May 13, 2019 is cancelled and of no force or effect.
2. The Tenant and Landlord agreed that the Tenant will have possession of the rental unit but must vacate the rental unit by **July 31, 2019 at 1:00 PM**.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this Application.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Conclusion

I have recorded the terms of settlement in this decision and in recognition of the settlement agreement, based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of May 13, 2019 to be cancelled and of no force or effect.

In addition, in support of the settlement described above and with agreement of both parties, I grant the Landlord an Order of Possession, to serve and enforce upon the Tenant if necessary, effective **July 31, 2019 at 1:00 PM**. 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: July 8, 2019

Residential Tenancy Branch