



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUME INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNC RP FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated September 17, 2019 (1 Month Notice), for repairs to the unit, site or property, and to recover the cost of the filing fee.

The tenant, an agent for the landlord JC (agent), two general contractors for the landlord BH and SB, and a property manager for the landlord LH (property manager) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Firstly, the agent and property manager testified that they were not served with the tenant's paper application that the tenant refers to in the Notice of Dispute Resolution Proceeding document dated September 26, 2019 (Notice of Hearing). The tenant testified that they served the landlord by registered mail; however, the only registered mail tracking number provided by the tenant, the tenant confirmed was incorrect and was from a previous hearing in 2017. As a result, and in the interests of fairness, the tenant requested and was granted additional time to locate the registered tracking number. Finally, after 23 minutes into the hearing, the tenant confirmed that they could not locate the registered mail tracking number. Section 89(1) of the Act requires that when serving the other party by mail with the application, it must be by registered mail.

Given that the tenant was unable to provide a registered mail tracking number, or specific information on when the registered mail was mailed to the landlord, and considering the property manager and agent confirmed that they were not served with the tenant's application and documentary evidence, I find that the respondents were not sufficiently served as required by section 89(1) of the Act.

Given the above, I dismiss the tenant's application due to a service issue, without leave to reapply. I have not granted leave to reapply, as the tenant is now beyond the 10-day timeline under section 47 of the Act to dispute the 1 Month Notice.

Section 55 of the Act requires that I grant the landlord an order of possession once the tenant's application has been dismissed. Considering I have reviewed the 1 Month Notice, which had an effective vacancy date of October 31, 2019 and of which I find complies with section 52 of the Act, I grant the landlord an order of possession. The property manager stated that they would be satisfied with an order of possession dated February 1, 2020 at 1:00 p.m., versus a two-day order of possession. Accordingly, I grant the landlord an order of possession effective **February 1, 2020 at 1:00 p.m.**

I find the tenancy ended on October 31, 2019, which was the effective vacancy date listed on the 1 Month Notice. As a result, I find that any claims for repairs is now moot as the tenancy has ended.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to the parties. In addition, any order(s) will be emailed to the appropriate party.

During the hearing, the name of the landlord was missing an "s" and pursuant to section 64(3)(c) of the Act, the landlords name was corrected.

The filing fee is not granted as the application was dismissed.

Conclusion

The tenant's application is dismissed without leave to reapply due to a service issue. The tenancy ended on October 31, 2019.

The landlord has been granted an order of possession effective February 1, 2020 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The filing fee is not granted.

This decision will be emailed to both parties as indicated above.

The order of possession will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2019

Residential Tenancy Branch