



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee for this application from the landlord?

Preliminary Issue- Time to Dispute Notice

After some initial discussions, the issue of the timing of the tenant's application arose. It was noted that section 47(4) of the *Act* provides that a tenant who receives a notice to end tenancy for cause has 10 days to dispute the notice. Further, section 47(5) of the *Act* confirms that failure to dispute the notice in the required time period results in the conclusive presumption that the tenant has accepted the tenancy ends on the effective date of the notice.

In this case, the tenant agreed and confirmed that the One Month Notice to End Tenancy for Cause was personally served to him on September 19, 2019. The tenant did not file an application to dispute the notice until October 3, 2019; 14 days after receiving the notice. Accordingly, I find that the tenant was outside of the legislated

timeline to dispute the notice and are conclusively presumed to have accepted that the tenancy ended on the effective date of October 31, 2019.

Based on the above, I hereby dismiss the tenant's application to set aside the notice without leave to reapply.

When a tenant's application to cancel a notice to end the tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession. I have examined the One Month Notice to End Tenancy for Cause with an effective date of October 31, 2019 and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act*. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia. The landlord confirmed that the tenant has paid the rent for the month of November, accordingly; the order of possession takes effect at 1:00 p.m. on November 30, 2019.

Conclusion

The One Month Notice to End Tenancy for Cause dated September 19, 2019 with an effective date of October 31, 2019 is confirmed, it is of full effect and force. The tenancy is terminated. The landlord is granted an order of possession.

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

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: November 08, 2019

Residential Tenancy Branch