



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 tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants' made their Application for Dispute Resolution with the Residential Tenancy Branch (RTB) on October 8, 2019 and received the Notice of Dispute Resolution Proceeding Package that same day.

The landlord testified that the tenants did not serve her with the Notice of Dispute Resolution Proceeding Package until November 5, 2019, which the tenants eventually confirmed was correct.

Preliminary Issue – Tenants' Application for Dispute Resolution Dismissed

RTB Rules of Procedure sets out the requirement under section 59(3) of the *Act* regarding service of the Notice of Dispute Resolution Proceeding Package, as follows:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) *the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) *the Respondent Instructions for Dispute Resolution;*
- c) *the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and*
- d) *any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].*

As such, I find that the tenants failed to comply with serving the Notice of this hearing to the landlord in accordance with the Rules of Procedure and the *Act*.

Further, the tenants testified that they received the landlord's One Month Notice posted on the door on September 27, 2019. The tenants did not file an Application for Dispute Resolution with the RTB to dispute the Notice until October 8, 2019, which is beyond the 10 days provided to dispute a One Month Notice in accordance with section 47(4) of the *Act*. I also note that the tenants failed to apply for a time extension to dispute the notice.

For these reasons noted above, based on the testimony of the parties, on a balance of probabilities, I dismiss the tenants' Application to dispute the landlord's One Month Notice.

Issue(s) to be Decided

Should the landlord's Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

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

Background and Evidence

Although both parties claimed to have provided a copy of the One Month Notice to the RTB, there was no copy of the One Month Notice in the RTB file for this hearing.

Further, the landlord had claimed she had provided the RTB with some documents, however, there was no documentary evidence from the landlord in the RTB file for this hearing.

Analysis

As I explained to the parties in the hearing, if a tenant's application to dispute a notice to end tenancy is dismissed, pursuant to section 55 of the *Act*, the landlord is entitled to an Order of Possession on the basis of the One Month Notice, if the notice is in the approved form and compliant with the other requirements set out in section 52 of the *Act*.

In the matter at hand, there was no notice to end tenancy submitted into evidence for me to consider, and therefore I am unable to determine with any certainty the grounds to end tenancy that were identified on the notice provided to the tenant, nor am I able to confirm that the notice complied with the requirements of section 52 of the *Act*.

Therefore, as a result of the lack of documentary evidence available for this hearing regarding the grounds for issuing the notice to end tenancy, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause.

Further, as I am unable to confirm that the One Month Notice meets the requirements of section 52 of the *Act*, the One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenants' Application is dismissed, I find that the tenants are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' Application to dispute the landlord's One Month Notice is dismissed.

The One Month Notice is cancelled and of no force or effect.

This tenancy shall continue until it is ended in accordance with the *Act*.

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 12, 2019

Residential Tenancy Branch