



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OLC, RP, FFT

Introduction

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

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter – More time to file an application to dispute the notice pursuant to Section 66 of the Act.

Background and Evidence

At the outset of the hearing, 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 when the ground to end the

tenancy is for cause. 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.

The landlord gave the following testimony. The landlord sent the One Month Notice to End Tenancy for Cause by registered mail on August 20, 2019. The landlord provided Canada Post Tracking information that reflects that the item was returned unclaimed to the landlord on September 11, 2019 despite the letter carrier leaving notice cards on August 22, 2019 and August 28, 2019 advising the tenant where they could pick up the package. The landlord testified that they have complied with the *Act* and should be entitled to an order of possession.

The landlord testified that a notice was posted by the mailboxes advising tenants to check their mailboxes daily as there were mailbox thefts occurring in the area. The landlord testified that the tenants did not advise her that they were not checking the mail or that they had a different mailing address. The landlord testified that she served the notice to their unit where they lived as that was the only address she had for the tenants. The landlord testified that the tenants have paid for the rent for the month of December for use and occupancy and are content with an order of possession for the end of the month.

The tenant testified that he received the notice on September 16, 2019 and filed an application for dispute resolution. The tenant provided documentation that it was stamped received by the Service BC office on September 23, 2019. The tenant testified that there was a notice posted in the building that advised that the mailboxes were being broken into and that he had all his mail sent to his daughter's address. The tenant testified that he didn't check his mailbox until mid September when he found the notice card left by Canada Post.

The tenant testified that on September 16, 2019 the landlord left a cleaning list for move out. The tenant testified that he was puzzled by the notice and was later provided a copy of the notice and all documentation by the landlord. The tenant testified that he didn't know he had to let the landlord know that he wasn't accepting mail where he was living and that he would have gladly discussed the matter in person to resolve it if she had phoned him.

Analysis

Section 88 of the Act addresses the issue before me as follows.

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

The tenants did not provide sufficient evidence to support an extension of time to file their application. The tenants did not provide exceptional circumstances to be granted an extension. In the tenant's own testimony, he stated that he never checked the mailbox despite a notice from the landlord advising tenants to do so daily. The tenants have not provided sufficient evidence to show that they were not served as stated by the landlord's testimony and supported by their documentation.

I find that the landlord served the notice to end tenancy on August 20, 2019 to the only address they had in accordance with section 88 of the Act. Further, as stated in section 90 of the Act, the tenants were deemed served on August 25, 2019. The tenants did not file their application until September 23, 2019; 29 days after being deemed to have received the notice. Accordingly, I find that the tenants were 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 September 30, 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 dated August 20, 2019 with an effective date of September 30, 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 remainder of the items the tenant applied for are only if the tenancy continued, as I have found that the tenancy is terminated, I dismiss the remainder of the tenant's application.

Conclusion

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: December 03, 2019

Residential Tenancy Branch