



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC LAT OLC PSF (tenant); FFL OPC (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause and One Month Notice to End Tenancy For End of Employment ("Notice") pursuant to section 47;
- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to comply with the *Act*, regulations, and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62.

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by teleconference. The tenant FE attended for both tenants. Both parties provided affirmed testimony. The hearing process was explained, and both parties had to opportunity to ask questions. Each party had the opportunity to make submissions, present documentary evidence, call witnesses and cross examine the other party.

Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find each party served the other in accordance with section 89 of the *Act*.

Preliminary Issue

At the commencement of the hearing, I advised the parties that Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant's application included unrelated claims in addition to the tenant's application to dispute the landlord's Notice. I find that the tenant's primary application pertains to disputing a notice to end tenancy; therefore, I find that the additional claims are not related to whether the tenancy continues.

Thus, all the tenant's claims, except for the tenant's application to dispute the landlord's Notice are dismissed. I make no findings with respect to these claims. I grant the tenant liberty to reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of One Month Notice to End Tenancy for Cause and One Month Notice to End Tenancy For End of Employment ("One Month Notice") pursuant to section 47; and

Is the landlord entitled to:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenant lives in the basement unit of a building owned by the landlord.

The landlord entered into a tenancy agreement three or four years ago for the building in which the unit is located with JV, who has vacated the building.

The landlord testified that without the landlord's permission, JV sublet rooms in the building to occupants; JV sublet the basement unit to the tenant.

No copy of any tenancy agreement was submitted.

As JV vacated the building and no longer lives in the area, the tenant has been paying \$500.00 a month rent to the landlord for an indeterminate period. The tenant paid rent of \$500.00 to the landlord for the month of January 2020.

By letter dated October 9, 2019, a copy of which was submitted, the landlord was notified by the municipality that the unit was an illegal secondary suite.

Accordingly, the landlord provided the Notice to the tenant dated and served November 1, 2019. The tenant acknowledged personal service on November 1, 2019. The effective date of the Notice was November 30, 2019, amended to December 31, 2019. The Notice states as the grounds for issuance that:

- Rental unit/site must be vacated to comply with a government order; and
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The Notice provided the tenant had the right to dispute the Notice within 10 days of receipt by filing an Application for Dispute Resolution. The tenant applied for Dispute Resolution on November 18, 2019, outside the 10-day period. The tenant stated she continued to reside in the unit.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

I have reviewed the Notice and find that it complies with section 52 of the *Act*.

I also find that the landlord effectively served the Notice on the tenant on November 1, 2019, as acknowledged by the tenant. I find the effective date was December 31, 2019.

The tenant eventually applied to dispute Notice on November 18, 2019, which I find is beyond the 10-day timeline provided for under the *Act*. Section 47(4) and 47(5) of the *Act* states the following:

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days after the date the tenant receives the notice.**

(5) **If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant**

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[Emphasis added]

Based on the above and pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective vacancy date, December 31, 2019. Therefore, I find the tenancy ended on that date and I dismiss the tenant's application without leave to reapply.

I note that the tenant did not apply for more time to make an application to dispute a Notice to End Tenancy under the *Act*.

Pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **on two days' notice.**

As the landlord has been successful in the landlord's application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee.

Conclusion

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

The landlord is granted an order of possession effective on 2 days' notice. This order must be served on the tenant. If the tenant does not vacate the unit, this order may be enforced in the Supreme Court of British Columbia.

The landlord is granted a monetary order of \$100.00 which must be served on the tenant. The order may be filed in the Small Claims Division of the Supreme Court of British Columbia and 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: January 09, 2020

Residential Tenancy Branch