



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1226668 BCLTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an application from the tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The tenant applied for:

- cancelling a one month notice for cause pursuant to section 47 of the *Act*;
- authorisation to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

I was designated to hear an application regarding the above-noted tenancy. The landlord failed to attend at the appointed time set for the hearing, although I waited until 9:43 A.M. to enable them to call into this hearing scheduled for 9:30 A.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision.

Counsel attended on the tenant’s behalf and made submissions. Counsel ascertained that the landlord was served the Notice of Dispute Resolution package and supporting evidence on December 19, 2019 by registered mail. I find that the landlord was served with this package on that date, in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order for the cancellation of the landlord's One Month Notice pursuant to section 47 of the *Act*? and

Is the tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began early September 2019. Monthly rent is paid by Disability Assistance in the amount of \$650.00 per month. No security deposit was paid by the tenant.

The landlord issued the One Month Notice (Notice) on December 13, 2019. Counsel advised that the notice was posted on the tenant's door on the same day it was issued. The One Month Notice had an effective date of January 31, 2020. The grounds stated for ending the tenancy were the following:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- adversely effected the quiet enjoyment, security, safety or physical well being of another occupant.
- jeopardize a lawful right or interest of another occupant or the landlord.

Counsel argued that the Notice was void as the landlord inserted an incorrect address for the tenant's rental unit. Counsel advised that he had called the landlord last week and informed them that the address was incorrect in the Notice.

Counsel argued there were no letters or evidence filed by the landlord from other tenants in the rental units, confirming any illegal activity or that the tenant was being loud and disruptive and infringing on others' rights to quiet enjoyment.

Analysis

A tenant may dispute a One Month Notice pursuant to section 47(4) of the *Act* by making an application for dispute resolution within 10 days after the date the tenant

receives the notice. The tenant disputed the landlord's notice on December 18, 2019 in accordance with the *Act*.

When a tenant disputes a notice, pursuant to the Rules of Procedure - Rule 6.6, the landlord has the onus of establishing proof, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, that is more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord failed to appear and present any evidence to establish grounds to end the tenancy. Furthermore, the landlord inserted the incorrect address on the Notice to end Tenancy pursuant to rule 7.17 with regards to evidence and service of documents.

Without further evidence from the landlord, I find there is insufficient support and reason to end the tenancy. I find that the landlord has not met the burden of proof in this matter. For these reasons, I find that the landlord has failed to provide any evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy shall continue until ended in accordance with the *Act*.

Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues in accordance with the *Act*.

As the tenant has been successful in this application, I grant him the \$100.00 filing fee to be deducted from the rent for the month of March 2020.

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*.

January 31, 2020