



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, OLC, FFT**

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 (“One Month Notice”) pursuant to section 47;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty-six minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord was served with the Notice of Hearing and Application for Dispute Resolution by registered mail and received by the landlord in mid-January 2020, although the landlord could not recall the date. Under section 90, the landlord is deemed to have received the documents five days later. I find the tenant served the landlord as required by the *Act*.

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Tenant's application

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified that the tenancy began on August 1, 2019. Rent is \$1,000.00 and the tenant provided a security deposit of \$500.00 which the landlord holds.

The landlord provided a notice issued by the municipality in which the unit is located dated January 11, 2020 stating that the unit is an "unauthorized use" of the building, in

other words, an “illegal suite”. The landlord testified that the landlord has received three fines since that date each in the amount of \$500.00 which are issued every two weeks until the suite is vacant.

The landlord issued a One Month Notice to End Tenancy for Cause dated January 1, 2020 which provide as a reason for issuance that the rental unit must be vacated to comply with government order. The Notice stated that the landlord served the Notice upon the tenant by posting to the tenant’s door on January 1, 2020. The landlord testified to the service. The effective date of the vacancy is February 1, 2020, corrected to February 29, 2020.

The tenant has not vacated the unit. The tenant filed an Application to cancel the Notice on January 5, 2020 within ten days but has failed to attend the hearing of the tenant’s application.

The landlord requested an order of possession.

Analysis

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I dismiss the tenant’s request to cancel the One Month Notice as well as the other relief requested by the tenant.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord’s notice to end tenancy complies with section 52 and the tenant’s application is dismissed.

I determine the landlord’s notice to end tenancy form complies with section 52. I have dismissed the tenant’s application. I therefore find the landlord is entitled to an order of possession.

Conclusion

I dismiss the tenant’s application without leave to reapply including the tenant’s application to set aside the One Month Notice.

I grant the landlord an order of possession which is effective two days after service on the tenant.

The landlord must serve this order on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia enforceable 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: March 06, 2020

Residential Tenancy Branch