



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the Residential Tenancy Act (the “Act”), to cancel Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, (the “Notice”) dated March 23, 2020. The matter was set for a conference call

The Landlord and the Landlord’s wife (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant was the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision

Issues to be Decided

- Should the Notice dated March 23, 2020 be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee for their application?

Background and Evidence

The Landlord testified that the tenancy began in April 30, 2019 as a month to month tenancy. Rent in the amount of \$820.00 is to be paid by the first day of each month.

The Landlord testified that the Tenant was served with the Notice to end tenancy dated March 23, 2020, by personal service on March 24, 2020. The reason checked off by the Landlord within the Notice was as follows:

- *Convert the rental unit for use by caretaker, manger or superintendent.*

The Landlord's documentary evidence shows they had issued the notice with the intent of moving into the property themselves and being the onsite property managers for the park.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Rules 7.1, 7.3 and 7.4 of the Rules of Procedure provide as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to

present evidence, any written submissions supplied may or may not be considered.

This hearing was scheduled to commence at 11:00 a.m. on May 21, 2020. I called into the teleconference at 11:00 a.m., the line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 9:41 a.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

During the hearing, the Landlord requested an order of possession to enforce their Notice to end tenancy. Section 55(1) of the *Act* states:

Order of possession for the landlord

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.*

I have reviewed the Notice to end the tenancy, and I find the Notice complies with section 52 of the *Act*.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*. I grant the Landlord an **Order of Possession** effective not later than **1:00 p.m. on July 31, 2020**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that the Emergency Order permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the *Act* (tenancy frustrated). The order of possession

granted above is not issued pursuant to either section 56 or 56.1 of the Act and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

I grant an **Order of Possession** to the Landlord effective not later than **1:00 p.m. on July 31, 2020**. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 21, 2020

Residential Tenancy Branch