



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Brothers and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, LAT

Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the *Act*.
- request for more time to cancel the One Month Notice pursuant to section 66(1) of the *Act*.
- authorization to change the locks for the tenant pursuant to section 31 of the *Act*.

The landlord's Property Manager EH and Building Manager RB attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m.

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. I proceeded with the hearing.

The Property Manager EH testified that they received the Notice of Dispute Resolution from the tenant together with the evidentiary package via Canada Post registered mail on April 20, 2020.

The Property Manager testified that they served their evidentiary material in response to the tenant's application, to the tenant on April 15, 2020 by regular mail as permitted by the Director's Order dated March 30, 2020 which is in effect during the state of emergency provisions made under the *Emergency Program Act*. I find that this satisfied the service requirements set out in sections 88 of the *Act* and I find the tenant was sufficiently served as per section 71(2) (b) of the *Act*.

Issues to be Decided

Is the tenant entitled to cancel the One Month Notice pursuant to section 47 of the *Act*?

Is the landlord entitled to an order of possession for cause pursuant to section 55 of the *Act*?

Background and Evidence

The parties entered into a written tenancy commencing on June 1, 2019. Monthly rent is \$1,200.00 and is payable on the first of each month. The tenant paid \$600.00 security deposit at the commencement of the tenancy which is held in Trust by the landlord.

The landlord testified that the tenant was served with the landlord's One Month Notice to End Tenancy for cause (the "Notice") on March 23, 2020 by attaching to the rental door. This was witnessed by a third party.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
 - 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;
 - put the landlord's property at significant risk;
 - adversely effect the quiet enjoyment, security, and safety or physical well being of another occupant.

The Property Manager and Building Manager both confirmed that the tenant has not vacated the rental unit and that they are seeking an Order of Possession based on the One Month Notice.

Analysis

Upon review of the One Month Notice dated March 23, 2020 I find the form and content to be in compliance with Section 52 of the *Act*. As the landlord posted the One Month Notice on the tenant's door on March 23, 2020, I find the tenant is deemed to have received the One Month Notice on March 26, 2020 as per section 90 of the *Act*. The tenant had 10 days to from March 26, 2020 to dispute the notice. The tenant filed on April 17, 2020. Based on the landlord's undisputed evidence and testimony, I find the landlord had grounds to issue the said Notice.

Sections 47(4) and (5) of the Act state:

(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.

Based on the landlord's testimony and the Notice before me, I find that the tenant is deemed to have received with the Notice to end tenancy dated March 26, 2020. The tenant did file an application to dispute the Notice on April 17, 2020 which is outside the 10-day period. The tenant filed for more time based on medical grounds, however the tenant failed to provide any medical evidence or participate in the hearing.

Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit.

As this has not occurred, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

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

Conclusion

Pursuant to Section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant and any other occupants.

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: June 05, 2020

Residential Tenancy Branch