



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 05, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated May 01, 2020 (the "Notice"). The Tenant sought reimbursement for the filing fee.

The Landlord appeared at the hearing with H.R., his son, to assist. The Landlord intended to call a witness at the hearing. The Tenant called into the hearing 11 minutes late. The Tenant intended to call a witness at the hearing if necessary. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession based on the Notice?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2019 and is a month-to-month tenancy. Rent is \$1,200.00 per month due on the first day of each month.

A copy of the Notice was submitted. As stated, it is dated May 01, 2020 with an effective date of May 31, 2020. The grounds for the Notice are that the rental unit must be vacated to comply with a government order.

The parties agreed the Notice was served on the Tenant in person May 01, 2020.

I did not hear from the witnesses as it was not necessary to do so given my decision as outlined below.

Analysis

The Notice was issued under section 47(1)(k) of the *Residential Tenancy Act* (the “Act”).

There is no issue that the Notice is dated May 01, 2020 and was served on the Tenant May 01, 2020 as the parties agreed on this.

Ministerial Order M089 issued March 30, 2020 states:

3 (1) Despite sections...46 to 49.1 of the Residential Tenancy Act...a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect.

(2) If a landlord gave a tenant a notice to end the tenancy under sections 46, 47, 48, 49 or 49.1 of the Residential Tenancy Act before the date of this order, then

(a) the notice to end the tenancy remains in effect, subject to the dispute resolution process, and

(b) an order of possession may be granted under section 55 of the Residential Tenancy Act.

4 (1) Subject to subsection (2) of this section, in addition to the orders that the director may grant under sections 54, 55, 56 and 56.1 of the Residential Tenancy

Act, the director may grant an order, on application by a landlord under section 56 (1) of the Residential Tenancy Act, specifying an earlier date on which a tenancy ends and the effective date of the order of possession if the director is satisfied that

(a) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act, and

(b) it would be unreasonable to wait for this order to no longer apply.

(2) Except as permitted under section 3 (2) of this order, the director must not grant an order of possession under section 55 (1) of the Residential Tenancy Act or in the circumstances described in section 55 (2) (b) of the Residential Tenancy Act during the period this order is in effect.

The Notice was issued May 01, 2020, after the date of *Ministerial Order M089*. Pursuant to section 3(1) of the *Ministerial Order M089*, the Landlord was not permitted to serve the Notice on the Tenant.

Further, an Order of Possession could only be issued pursuant to section 55(1) of the *Act* if the Notice was not cancelled and it was determined the Notice was valid. As outlined in section 4(2) of the *Ministerial Order M089*, the Landlord cannot be issued an Order of Possession pursuant to section 55(1) of the *Act* while the *Ministerial Order M089* is in effect.

The issue before me is whether the Notice is valid. I find the Notice is not valid as the Landlord was not permitted to issue the Notice on May 01, 2020, after the date of the *Ministerial Order M089*. Given the Notice is not valid, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I explained the above to the parties during the hearing. H.R. advised that the Landlord was aware of the changes due to the current pandemic but thought the Landlord could still issue the Notice based on the ground that the rental unit must be vacated to comply with a government order. As set out in section 4(1) of the *Ministerial Order M089*, it is open to the Landlord to make an Application for Dispute Resolution under section 56(1) of the *Act* seeking to end the tenancy on the basis that:

(a) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act, and

(b) it would be unreasonable to wait for this order to no longer apply.

However, I can only consider the Application before me. The Application is the Tenant's dispute of the Notice, which is not a valid Notice. I do not have an Application for Dispute Resolution before me from the Landlord seeking to end the tenancy under section 56 of the *Act*. Whether the Landlord is entitled to an Order of Possession under section 56 of the *Act* is not the issue before me and therefore I have not considered this issue.

In the circumstances, the Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. The Tenant can withhold \$100.00 of one future rent payment as reimbursement for the filing fee pursuant to section 72(2) of the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

I award the Tenant reimbursement for the \$100.00 filing fee. The Tenant can withhold \$100.00 of one future rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 09, 2020

Residential Tenancy Branch