



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC-MT, OLC, RR, FFT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a One Month Notice to End Tenancy for Cause, for more time to apply to cancel a Notice to End Tenancy, for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for a rent reduction; and to recover the fee for filing this Application for Dispute Resolution.

Section 61 of the *Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for a teleconference hearing.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure stipulates that 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 decide or dismiss the application, with or without leave to re-apply.

This hearing was scheduled to commence at 9:30 on August 24, 2020. I dialed into the teleconference at 9:30 a.m., at which time the representatives for the Landlord had already joined the teleconference. The hearing proceeded at the scheduled start time, in the absence of the Tenants, in accordance with Rule 10.1 of the Residential Tenancy Branch Rules of Procedure.

By the time the teleconference was terminated at 9:45 a.m., neither Tenant had joined the teleconference.

The representatives for the Landlord were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

On August 14, 2020 the Landlord submitted evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was posted on the door of the rental unit on August 12, 2020. In the absence of evidence to the contrary, I find that this evidence was served to the Tenants and it was accepted as evidence for these proceedings.

Preliminary Matter

As the Tenants did not attend the hearing, I find that they failed to diligently pursue their application to set aside a One Month Notice to End Tenancy for Cause, for more time to apply to cancel a Notice to End Tenancy, for an Order requirement the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for a rent reduction; and to recover the fee for filing this Application for Dispute Resolution.

As the Tenants did not diligently pursue these matters, I dismiss all of these matters, without leave to reapply.

Issue(s) to be Decided

As the application to cancel the One Month Notice to End Tenancy for Cause has been dismissed, should the Landlord be granted an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that the One Month Notice to End Tenancy for Cause that is the subject of this dispute was placed in the Tenants' mail box on June 25, 2020.

The One Month Notice to End Tenancy for Cause, which was submitted in evidence, declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant or a person permitted on the property by the tenant has put the landlord's property at risk; that the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; and that the tenant has engaged in illegal activity that

has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

The One Month Notice to End Tenancy for Cause declares that the rental unit must be vacated by July 31, 2020.

The Caretaker for the Landlord stated that she spoke with the male Tenant, via telephone, on June 25, 2020, at which time she informed him that the One Month Notice to End Tenancy for Cause had been placed in his mail box.

The Caretaker for the Landlord stated that she spoke with the male Tenant, via telephone, on June 26, 2020, at which time he informed her that he had received the One Month Notice to End Tenancy for Cause.

Analysis

On the basis of the testimony of the Caretaker for the Landlord, I find that on June 26, 2020 the male Tenant received the One Month Notice to End Tenancy for Cause that is the subject of this dispute, which was served pursuant to section 47 of the *Residential Tenancy Act (Act)*.

Section 47(3) of the *Act* stipulates that a notice served pursuant to section 47 of the *Act* must comply with section 52 of the *Act*. I find that the One Month Notice to End Tenancy for Cause that is the subject of this dispute complies with section 52 of the *Act*.

Section 47(4) of the *Act* stipulates that 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. As I have concluded that the male Tenant received the One Month Notice to End Tenancy for Cause on June 26, 2020, I find that the Tenants should have disputed the Notice by July 06, 2020.

Residential Tenancy Branch records show that the Tenants disputed the One Month Notice to End Tenancy for Cause on July 10, 2020. I therefore find that the Tenants did not dispute the One Month Notice to End Tenancy for Cause in accordance with the timelines established by section 47(3) of the *Act*.

I note that the Tenants applied for more time to apply to cancel the One Month Notice to End Tenancy for Cause. I have dismissed that application as they did not attend the hearing in support of it.

Section 47(5) of the *Act* stipulates that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and the tenant must vacate the rental unit by that date.

As the Tenants did not apply to dispute the One Month Notice to End Tenancy for Cause within the timelines established by section 47(4) of the *Act*, I find that they are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice to End Tenancy for Cause.

As the Tenants' application to set aside One Month Notice to End Tenancy for Cause has been dismissed, I grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced 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 *Act*.

Dated: August 24, 2020

Residential Tenancy Branch