



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

This hearing dealt with an Application for Dispute Resolution (the Application) filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice).

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and two agents for the Landlord T.M. and J.F., all of whom provided affirmed testimony. At the outset of the hearing the Landlord D.S. stated that neither they nor the other Landlord R.S. had not been served with a copy of the Application, the Notice of Hearing, or any documentary evidence from the Tenant. The Tenant acknowledged that they did not serve the Landlords with the above noted documents, or any other documentation in relation to this hearing, as they stated that they were unaware of the requirement to do so and the Landlords live in another province. However, the Tenant stated that they advised the Landlord D.S. about the hearing and provided them with the hearing date and time as well as the file number, the teleconference phone number and the hearing code, so that they could attend the hearing.

Section 59 of the Act states the following with regards to the service of an Application for dispute Resolution on the Respondent:

Starting proceedings

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) also state the following with regards to the service of documents and evidence:

3.1 Documents that must be served with the hearing package

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Application for Dispute Resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

I find that advising the Landlord(s) of the date and time of the hearing and providing them with the file number, teleconference phone number and the hearing code does not constitute service under the Act or the Rules of Procedure and as a result, I find that the Landlords have therefore not been duly served with the Application, the Notice of Hearing, or the evidence before me in accordance with the above noted sections of the Act and the Rules of Procedure. Further to this, I find that the opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlords were not served with the Application, Notice of Hearing, or the documentary evidence before me by the Tenant as required, I find that the Landlords therefore did not have a fair opportunity to know the case against them or provide a full defense. I also find that it would be a breach of the Act, the Rules of Procedure, and the Principles of natural justice to allow the Tenant's Application, given that the Landlords had not been properly served. As a result, I dismiss the Tenant's Application without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlords are entitled to an Order of Possession pursuant to section 55(1) of the Act.

The Landlord D.S. stated that their agent J.F. served the One Month Notice and J.F. testified that it was placed in the Tenant's mailbox on July 22, 2020. In the Application

the Tenant stated that they received the One Month Notice on July 22, 2020; however, in the hearing they stated that it was received several days later, although they could not provide an exact date. Based on the above, I find that the Tenant was deemed served with the One Month Notice on July 25, 2020, pursuant to section 90(d) of the Act.

The One Month Notice in the documentary evidence before me is in writing on the approved form, is signed and dated by the Landlords, gives the address of the rental unit, states the effective date of the One Month Notice and gives the reason for ending the tenancy. As a result, I find that it complies with section 52 of the Act and the Landlords are therefore entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the *Act*.

As the effective date of the One Month Notice, August 31, 2020, has passed and the parties agreed that rent has not yet been paid for the current month, the Order of Possession will therefore be effective two (2) days after service on the Tenant. I therefore order that the Tenant, and all occupants permitted in the rental unit by the Tenant, vacate the rental unit in compliance with the Order of Possession.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlords effective **two (2) days after service on the Tenant**. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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 *Residential Tenancy Act*.

Dated: September 10, 2020

Residential Tenancy Branch