



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on September 15, 2020. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancellation of the Landlord's 1 Month Notice to End Tenancy for Cause (the Notice) pursuant to section 47.

Preliminary Matters – Amendments to Named Parties

The Tenant attended the hearing. Both owners of the property were also present at the hearing (the "Landlords"). An individual named A.R. (who works for a realty company who was initially named as a Landlord/Respondent by the Tenant on this application) attended the hearing and identified herself as an agent for the Landlords (the "Agent"). The Landlords stated that they have had ongoing and escalating issues with the Agent, and as of August 11, 2020, they terminated their relationship with the Agent (and related real estate company). The Landlords expressed that they have larger legal issues going on with this Agent, which could not be discussed in the presence of the Tenant.

At the start of the hearing, the Agent started trying to undermine the Landlords position and persuade me that the Landlords did not have cause to end the tenancy, under this type of Notice. It became apparent the Agent and the Landlords were no longer seeing eye-to-eye, and were likely at the start of a larger legal battle, which may end up in other Law Courts. It is undisputed that A.R. was an agent for the Landlord, at the time the unit was rented to the Tenant, and for a period of time after that. However, this relationship appears to have been substantially modified, as per the testimony provided

to me, and the letter provided into evidence by the Landlords (which sought to terminate the agency relationship around August 11, 2020.)

The Agent felt that since she was named by the Tenant on this application, she had a right to be involved in the hearing. However, I explained that ultimately, it is the Landlords/owners who are liable for the issues resulting from this tenancy, and it is their right to determine who acts as their agent or who represents them in a legal proceeding. Since the Landlords both confirmed they no longer employ this agency, I hereby amend the Tenant's application to remove the Agent and her real estate company from the proceeding. The Landlords/owners wanted to represent themselves and proceed as the sole respondents on this application.

I explained to the Agent that I was amending the Tenant's application to remove her as a named party, and, for the purposes of this proceeding, she was not required or authorized to continue participating. This was done pursuant to section 64(3)(c) of the Act. I asked the agent to disconnect from the hearing. However, she refused and began telling me that she felt entitled to attend and again tried to undermine the Landlords' position (grounds for ending the tenancy). Again, after reminding the Agent, that, for the purposes of this proceeding, she is not required or permitted to participate further, she requested the spelling of my name, and then disconnected.

Preliminary Matters – Service Issues

At the start of the hearing, the Tenant was asked how he served the Landlords with his Notice of Dispute Resolution Proceeding. The Tenant specifically stated that he did not give the Landlord this document and only gave them his evidence. The Landlord confirmed that they got an evidence package from the Tenant, but it lacked the Notice of Dispute Resolution Proceeding. The Landlords stated that the only reason they knew about the hearing and the access codes was because these codes were provided to them by the RTB over the phone.

The Landlords stated that since they were never given the Notice of Dispute Resolution Proceeding, they were never properly put on notice regarding what the issues were for this hearing, what the application entailed. The Landlords also stated that they felt like they were prejudiced by not being served with this document because they were left guessing what the issues would be, and they were not provided with the information and resources to help with preparing and presenting their case. The Landlords also noted that because they never got the Notice of Dispute Resolution from the Tenant, they did not have his address for service for this proceeding. The Landlords noted that after they

got the Tenants evidence package by mail, they tried sending their evidence back to the Tenant at the return address he put on his evidence package. However, since this is a rural community, the package was returned, as there was no PO Box number. As a result, the Landlords were not able to serve the Tenants, as they do not reside in town.

Having reviewed the totality of this matter, I note the Rules of Procedure clearly state that the Notice of Dispute Resolution Proceeding must be served to the respondent. I note the following Rule of Procedure:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

*The applicant must, **within three days** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;*
- b) the Respondent Instructions for Dispute Resolution;*
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) 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].*

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

I find the Tenant failed to sufficiently serve the Landlords with the required documents and I find this prejudiced the Landlords and their ability to understand and respond to the application against them. Since the Tenant failed to serve the required documents, I dismiss his application in full, without leave.

Under section 55 of the *Act*, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession. I have reviewed a copy of the Notice to End Tenancy provided into evidence, and I find that the Notice complies with the requirements of form and content.

Conclusion

The Tenant's application to cancel the 1-Month Notice to End Tenancy for Cause is dismissed.

The Landlord is granted an order of possession effective **September 30, 2020, at 1pm**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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 16, 2020

Residential Tenancy Branch