



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on August 14, 2020, under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause (the “Notice”) issued on July 31, 2020. The matter was set for a conference call.

The Landlord, the Landlord’s attorney (the “Landlord”), and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued on July 31, 2020, be cancelled pursuant to section 47 of the Act?
- Is the Landlord entitled to an order of possession pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the Landlord served the Notice to end tenancy to the Tenants on July 31, 2020, by personal service. The Tenants submitted a copy of the Notice into documentary evidence.

The reason for the Notice was checked off as follows:

- *The Tenant has allowed an unreasonable number of occupants in the unit/suite/property/park*
- *Tenant is repeatedly late paying rent*

The Notice states the Tenants must move out of the rental unit by September 1, 2020. The Notice informed the Tenants of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice is not filed within ten days, the Tenants are presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they had started their application to dispute the Notice on August 10, 2020, but that they did not submit the application until August 14, 2020.

The Tenant testifies that they submitted the application late due to the stress they were under at the time.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within 10 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 49(9) of the *Act*.

Landlord's notice: cause

47 (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.*

I accept the Tenant's testimony that they personally received the Notice to end the tenancy on July 31, 2020. Pursuant to section 49(8) the *Act*, the Tenants had August 10, 2020, to file an application to dispute the Notice with the Residential Tenancy Branch.

I have reviewed the Tenants' application and noted that they filed to dispute the Notice on August 14, 2020, which is outside the statutory time limit.

Due to not filing within the statutory time limit, I find that the Tenants are conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. Therefore, I must dismiss the Tenants' application to dispute the Notice.

Section 55 (1) of the *Act* states the following:

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I have reviewed the Notice, and I find that this Notice complies with section 52 of the *Act*.

As I have dismissed the Tenants' application to dispute the Notice, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants' Application to cancel the Notice, issued July 31, 2020, is dismissed. I find the Notice is valid and complies with the Act.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenants. The Tenants must be served with this Order. Should the Tenants 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: October 1, 2020

Correction Dated: October 14, 2020

Residential Tenancy Branch