



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

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

- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- 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 Landlord and the Tenant's sibling, who acted as the Tenant's agent (the Agent), both of whom provided affirmed testimony. The Tenant did not attend. Although the Agent stated that the Tenant's lack of attendance was due to their lack of a telephone, the Landlord stated that the Tenant had just walked by their office and although they had offered the Tenant use of a phone or the ability to join them on their own call, the Tenant had refused. The hearing nevertheless proceeded as scheduled pursuant to rule 7.3 of the Rules of Procedure despite the absence of the Tenant, as it was the Tenant's Application and both the Landlord and the Agent for the Tenant had appeared on time.

Section 52 (3) of the Act states that 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 the application, or within a different period specified by the director. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) states that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch (the 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 Branch;
- c) the dispute resolution proceeding information package provided by the Branch; and
- d) any other evidence submitted to the 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].

Rule 3.14 of the Rules of Procedure states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing and rule 3.5 states that the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and the Rules of Procedure.

In the hearing the Landlord testified that they were never served with a copy of the Application, the Notice of Hearing, or any documentary evidence by the Tenant, and only became aware of the hearing by way of a letter indicating that the Tenant planned to proceed with dispute resolution, and a conversation with the Agent. The Landlord stated that they subsequently contacted the Branch to obtain the hearing information. The Agent acknowledged in the hearing that none of the above noted documents had been served.

The opportunity to know the case against you and the opportunity to be heard are fundamental to the dispute resolution process. As the Landlord was not served with the Application or Notice of Hearing by the Tenant as required by the Act and the Rules of Procedure, I find that they did not have a fair opportunity to know the case against them or to properly prepare for the hearing in their defense. I also find that simply advising the respondent of a potential or existing dispute, and leaving it up to the respondent to seek out information about the dispute and hearing themselves does not constitute valid service under either the Act or the Rules of Procedure, regardless of the respondents ability to attend the hearing. Further to this, I find that proceeding with the hearing as scheduled and rendering a decision in relation to the substantive matters claimed in the Application would be a breach of the Act, the Rules of Procedure, and the principles of natural justice. As a result, the Application is therefore dismissed.

As the timelines for disputing the One Month Notice have passed and section 55 of the Act requires me to assess if the Landlord is entitled to an Order of Possession based on

the One Month Notice due to the dismissal of the Tenant's Application seeking cancellation of the One Month Notice, I therefore dismiss this portion of the Tenant's Application without leave to reapply. As the Tenant's Application seeking an order for the Landlord to comply with the Act, regulation or tenancy agreement appears to be related to the One Month Notice, it is also dismissed without leave to reapply.

The One Month Notice in the documentary evidence before me is signed and dated, contains the address for the rental unit and the effective date of the notice, states the grounds for ending the tenancy, and is in writing on the approved form. During the hearing the Landlord stated that it was served on the Tenant on August 17, 2020, and the Agent confirmed in the hearing that it was received by the Tenant on that date. Based on the above, I find that the One Month Notice complies with section 52 of the Act and that the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55(1) of the Act.

Although the effective date of the One Month Notice, September 30, 2020, has passed, the parties agreed in the hearing that rent for October has been paid. As a result, the Landlord stated that they are willing to accept an Order of Possession for the end of October 2020. Pursuant to section 55(1) of the Act, I therefore grant the Landlord an Order of Possession for 1:00 P.M. on October 31, 2020, and I order the Tenant to vacate the rental unit by this date and time.

Conclusion

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

Pursuant to section 55(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 P.M. on October 31, 2020**, after service of this Order on the Tenant. The Landlord is 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. The Tenant is cautioned that the cost of any such enforcement or the hiring of a bailiff, if necessary, are recoverable from them by the Landlord.

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: October 8, 2020

Residential Tenancy Branch