



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SACRED HOLDINGS INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNRL, FFL
 CNE, LRE

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”). The matter was set for a conference call.

The Landlord’s Application for Dispute Resolution was made on September 22, 2020. The Landlord applied to enforce a One-Month Notice End Tenancy for Cause (the “Notice”) issued on September 4, 2020, to for a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee

The Tenant’s Application for Dispute Resolution was made on September 27, 2020. The Tenant applied to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on September 4, 2020, and for an order to restrict or suspend the Landlord’s right to access to the rental unit.

Two Landlord’s and the Property Manager (the “Landlord”) attended the hearing; however, the Tenant did not. As the Tenant is an applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all evidence and testimony 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.

Preliminary Matters – Related Issues

I have reviewed both of the applications that I have before me, and I note that they have both applied to either cancel or enforce a Notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the request to the Notice. As these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the Landlord, at the outset of the hearing, that I am dismissing with leave to reapply the Landlord's claim for a monetary order for unpaid rent, as it is not directly related to the Notice to end tenancy.

I will proceed with this hearing on the Landlord's claim to enforce the notice and to recover the filing fee for this hearing.

Issues to be Decided

- Should the Notice to End Tenancy issued on September 4, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession pursuant to section 55 of the Act?
- Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The Landlord testified that they served the Notice to end tenancy to the Tenant on September 4, 2020, by posting the Notice to the front door of the rental unit. The Landlord submitted a copy of the Notice into documentary evidence.

The reason for the Notice was checked off as follows:

- *Tenant or a person permitted on the property by the tenant has*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*

- *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*

The Notice states the Tenant must move out of the rental unit by October 4, 2020. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant would be presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

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 47(5) 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 Landlord's testimony that the Notice to end the tenancy was service by posting it to the front door of the rental unit on September 4, 2020. Pursuant to section 90 of the *Act*, a Notice served in by this method is deemed received three days after it was posted. Therefore, I find that the Tenant was deemed to have received this Notice as of September 7, 2020. Accordingly, the Tenant had September 17, 2020, to file an application to dispute the Notice with the Residential Tenancy Branch.

I have reviewed the Tenant's application and noted that they filed to dispute the Notice on September 27, 2020, which is 10 days past the statutory time limit to file, pursuant to section 47 of the *Act*.

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

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

The Tenants' Application to cancel the Notice, issued September 4, 2020, is dismissed.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to keep \$100.00 from the security deposit.

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: November 20, 2020

Residential Tenancy Branch