



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Homes
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

The tenants filed an Application for Dispute Resolution on October 11, 2020 for a cancellation of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”).

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on January 4, 2021.

Preliminary Matters

At the outset of the hearing, the landlord provided that they received notice of this hearing on November 5, 2020. On my review of the Notice of Dispute Resolution, the document was generated, after the tenants’ Application, on October 16, 2020.

In the hearing, the tenants confirmed they delivered the Notice of Dispute Resolution to the landlord’s office on November 5, 2020. This was due to their working full days in the interim period after they filed their Application initially.

I have reviewed the *Residential Tenancy Branch Rules of Procedure*. These are in place to ensure an administratively fair, efficient and consistent process for parties to resolve disputes.

The *Act* section 59(3) states that the Applicant (here, the tenants) must, within three (3) days of the Notice of Dispute Resolution Proceeding provided to them by the Residential Tenancy Branch, serve the Respondent (here, the landlord) a copy of the application. Rule 3.1 states that the Applicant must serve copies of certain documents. These are:

- 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].

The Notice of Dispute Resolution here was generated and provided to the tenants on October 16, 2020. The *Act* is clear that it is the Applicant's responsibility to serve this document, along with their related documents, within three days, by October 19, 2020. They served the important document to the landlord on November 5, 2020. I find the tenants have failed to comply with their obligation to serve the hearing documents within the required timeframe.

The *Act* section 64(3) states that, subject to the *Residential Tenancy Branch Rules of Procedure* established by section 9(3), the director may deal with any procedural issues that may arise in a dispute resolution proceeding. On this basis, I dismiss the tenants' Application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession, pursuant to section 55 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, I here describe only the evidence and submissions relevant to the issues and findings in this matter.

In the hearing, the tenants presented that they received the One-Month Notice on October 2, 2020. The landlord stated they served this document by attaching it to the door of the rental unit and the tenants did not contradict or dispute this specific point.

Both parties in the hearing stated the landlord issued the document on October 2, 2020, for the final move-out date of November 30, 2020.

The landlord stated this was a three-page document. The tenants provided a picture of the third page of the document. This contains the detail that “tenants have received previous noise warning letters”. Both parties in the hearing then made their submissions on the timeline of the issue, going back to the beginning of the tenancy.

The picture of page 3 also contains the subsections: “1. When you are considered to have received this notice; 2. information for tenants, 3. information for landlords.” These give explicit instructions to the parties on how to proceed after the issuance of the One-Month Notice.

Analysis

Section 47 of the *Act* gives the reasons a landlord may issue a notice to end the tenancy.

The *Act* section 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
 . . . and
 - (e) when given by a landlord, be in the approved form.

Within the hearing, I reviewed the One-Month Notice by way of testimony of both parties. I find both parties confirmed the details of the cause were known to the tenants – these concern noise complaints. The tenants confirmed they received this document attached to their unit door on October 2, 2020. Additionally, I find the One-Month Notice contains the correct details on the date provided to the tenants as the move-out date. I also find the document was in the approved form.

Given these details that I ascertained by way of oral testimony in the hearing, I find the One-Month Notice complies with the section 52 requirements within the *Act* on form and content. There is no evidence that shows important details were omitted.

The *Act* section 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the document complies with all the requirements of section 52 of the *Act*.

Above, I dismissed the tenants' Application; therefore, by section 55(1) of the *Act*, the landlord is entitled to an Order of Possession. This means the tenancy is ending.

Conclusion

Under the *Act* sections 55(1) and 55(3), I grant an Order of Possession effective **January 31, 2021**. 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 *Act*.

Dated: January 4, 2021

Residential Tenancy Branch