



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49; and
- an extension of the timeline for disputing the Notice, pursuant to section 66.

The respondent (landlord), represented by CK and assisted by counsel BG ('the landlord'), called into this teleconference at the date and time set for the hearing of this matter. Although I waited until 9:51 A.M. to enable the applicant (tenant) to connect with this teleconference hearing scheduled for 9:30 A.M., the applicant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, his counsel and I were the only persons who had called into this teleconference.

The landlord affirmed he received the notice of hearing in November 2020 and served his response evidence in person on January 08, 2021 at 4:30 P.M. in the rental unit. I find the notice of hearing and the landlord's response evidence were properly served in accordance with section 89(2)(a) of the Act.

I proceeded with the hearing in the absence of the tenant, as per Rule of Procedure 7.3.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution 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 the Act.

Preliminary Issue – Tenant's application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

However, according to *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. If the tenant's application is dismissed, is the landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

While I have turned my mind to all the evidence provided by the landlord, including documentary evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is his obligation to present the evidence to substantiate his claim.

The landlord affirmed the tenancy started on September 15, 2019. Rent is \$2,300.00 per month, due on the first and fifteenth days of the month in equal instalments. At the

outset of the tenancy a security deposit of \$800.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence.

The landlord stated he served the Notice in person on August 23, 2020 and the tenant continues to occupy the rental property.

A copy of the Notice was provided. The Notice is dated August 23, 2020 and the effective date is October 15, 2020. The reason to end the tenancy is: "The rental unit will be occupied by the landlord's child or spouse".

The tenant's application was submitted on October 23, 2020.

Analysis

Based on the undisputed landlord's testimony, I find the tenant was served the Notice in person on August 23, 2020, in accordance with section 88 (1) of the Act.

Section 49(8)(a) states the tenant has 15 days to dispute a notice. As the tenant disputed the notice on October 23, 2020, I find the tenant disputed it after the statutory deadline.

Section 49(9) of the Act states:

- (9)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), 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.

Section 49(9) is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property. Per section 53(2) of the Act, I correct the effective date of the Notice to October 23, 2020.

The Notice is in accordance with Section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date, the grounds to end tenancy and is in the approved form.

As the tenant is occupying the rental unit, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(1) of the Act.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenant. 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.

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: January 22, 2021

Residential Tenancy Branch