



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord MB attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he was not served with the tenants' Application for Dispute Resolution Proceedings Package or any evidence. He only found out about the hearing by contacting the Residential Tenancy Branch himself. The Residential Tenancy Branch provided him with the access codes to call into the hearing and submit evidence.

Background and Evidence

The rental unit is the upper unit of a single-family home consisting of an upper and lower unit.

The landlord testified that one of the tenants, FF had an earlier tenancy with a co-tenant. When that co-tenant moved out, FF brought his children in as new co-tenants

and the parties entered into a new tenancy agreement, provided as evidence in these proceedings.

The landlord testified that the new co-tenants have substance abuse issues. They brought in drug addicted friends to visit and the neighbours have accused them of theft of a dirt bike. A message from a neighbouring property advising of the theft was provided as evidence. Since moving in, the new co-tenants have also left bags of garbage strewn about the property and the landlord provided photos of the garbage taken on October 25th. The landlord testified that the garbage has attracted rodents and the rodents are putting the property at risk.

On October 25th, the landlord served the tenants with a One Month Notice To End Tenancy for Cause by leaving it in their mail slot. A copy of the notice to end tenancy was provided as evidence by the tenants. The reason for ending the tenancy reads:

1. *the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;*
2. *the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
3. *breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The details of cause reads:

front yard used as a storing grounds for bags of refuse and waste. Situation has not been rectified after warning. Numerous complaints by neighbours regarding drug use and petty theft from neighbouring properties.

The effective date stated on the notice to end tenancy is November 30, 2020.

Analysis

The landlord gave undisputed testimony that he was not served with the Notice of Dispute Resolution Proceedings package. Section 89 of the Act requires that the Application for Dispute Resolution Proceedings Package must be served.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At 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 these Rules of Procedure.

Residential Tenancy Branch Policy Guideline PG-12 states that *failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.*

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the landlord has been served with the application for dispute resolution.

Rule 7.3 of the Rules of Procedure provides that 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. As the tenants have failed to attend the hearing and prove the landlord was served with the Notice of Dispute Resolution Proceedings package, their application to dispute the notice to end tenancy is **dismissed without leave to reapply.**

Based on the undisputed testimony of the landlord, I find the landlord had sufficient reason to end the tenancy. I find the bags of garbage stored on the property, attracting rodents has put the landlord's property at significant risk. I am also satisfied by the evidence of the tenants' neighbor and the testimony of the landlord, that a person permitted on the property has engaged in illegal activity that affects the safety or security of another occupant. For these reasons, **I uphold the notice to end tenancy issued on October 25, 2020.**

Section 55(1) of the Act reads as follows:

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 an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*
(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 examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*. As the effective date stated on the notice has passed, the landlord is entitled to an order of possession effective 2 days after being served upon the tenants.

Conclusion

The application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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 28, 2021

Residential Tenancy Branch