



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The named tenant, Ryan, C. attended the hearing via conference call and provided affirmed testimony. The named tenant, Robert C. did not attend. The named landlord, H.M. and the owner, D.M. attended the hearing via conference call and provided affirmed testimony.

At the outset, the tenants' application was clarified. The tenant named the landlord, H.M. The owner, D.M. stated that he was the landlord and that H.M. was his agent. The tenant stated that he has always dealt with H.M. and that her name is on the tenancy agreement. The owner, D.M. and his agent, H.M. argued that D.M. the landlord. D.M. stated that the 1 month notice served to the tenants clearly states that the landlord is D.M. The tenants conceded that the named landlord should be D.M. On this basis, both parties consented to the tenants' application being amended to reflect the named landlord as D.M.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 month notice?
Are the tenants entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that the landlord has used form RTO005 96/07/08 which states in part, on November 9, 2020, the landlord served the tenant with the 1 Month Notice dated November 9, 2020 in person. The 1 Month Notice sets out an effective end of tenancy date of November 18, 2020 and that it was being given as:

- the tenant has breached a reasonable material term of the tenancy agreement and has failed to rectify the breach within a reasonable time after receiving written notice to do so from the landlord.

The listed details/reason of the notice state:

The tenants continuous arguing and fighting has not stopped, after verbal and written notice was given- disturbing all other tenants in this building still continues with no regard at all- see written notice/agreement.

[reproduced as written]

Despite the landlord using form RTO005 96/07/08, I find that the landlord seeks to end the tenancy for breach of a material term of the tenancy.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants provided written details which state:

There has not been continuous arguing and fighting
Our loudness (without hearing aids) stopped after we received the first warning
Landlord used 2 isolated circumstances against us to count as a second warning,
than a notice to end tenancy

[reproduced as written]

Extensive discussions resulted in both parties entering into attempted discussions to settlement this dispute through mediation.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on March 31, 2021, by which time the tenants will have vacated the rental unit.

The landlords agreed to withdraw the 1 Month Notice to End Tenancy for Cause.

The tenants agreed to cancel the application for dispute filed.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on March 31, 2021. The landlord is provided with these orders in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the 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: February 09, 2021

Residential Tenancy Branch