



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

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 One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending affirmed they understand it is prohibited to record this hearing.

The landlord confirmed receipt of the notice of dispute resolution on May 14, 2021. I find the landlord was served the notice of dispute resolution in accordance with sections 88 and 89 of the Act.

The landlord submitted evidence to the Residential Tenancy Branch but did not serve it to the tenant.

Rule of Procedure 3.15 states:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and

subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the landlord did not serve his evidence I excluded it, per Rule of Procedure 3.15.

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.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Notice?
2. Is the tenant entitled to an authorization to recover the filing fee?
3. 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 accepted evidence provided by the parties, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started in June 2013. Rent is \$1,300.00 per month, due on the 12th day of the month.

Both parties also agreed the landlord served the Notice in person to the tenant on April 19, 2021 and the tenant continues to occupy the rental unit. The paper-based application is dated April 29, 2021. The tenant does not remember when he filed the application. The dispute management system indicates the tenant's application and the payment were submitted on April 30, 2021.

A copy of the Notice was provided. The Notice is dated April 19, 2021 and the effective date is June 01, 2021. The reasons to end the tenancy are: "tenant is repeatedly late paying rent" and "tenant has not done required repairs of damage to the unit/sit/property/park".

The details of the cause are:

No payment of rent for October, November, December 2020, January, February, March and April 2021

Damage of deck in the back yard not repaired

Both parties agreed the tenant has not paid rent since October 2020. The landlord affirmed the tenant said he would repair the rental unit's deck and he has not conducted the necessary repairs.

Analysis

Based on both parties undisputed testimony, I find the tenant was served the Notice in person on April 19, 2021, in accordance with section 88 (1) of the Act.

Residential Tenancy Branch Rule of Procedure 2.6 states:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

The tenant was not able to inform when he filed the paper-based application. Based on the dispute management system information, I find the tenant submitted this application on April 30, 2021, per Rule of Procedure 2.6.

Page 3 of the Notice received by the tenant states:

2. INFORMATION FOR TENANTS

You have the right to dispute this Notice **within 10 days** after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. **An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.**

If you do not file an Application within 10 day, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner). If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

Note: the date a person receives documents is what is used to calculate the time to respond.

(emphasis added)

Sections 47(4) and (5) of the Act state:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (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.

Section 47(5) is mandatory, and I do not have discretion as to its application. The tenant did not file an application to dispute the notice within 10 days. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (June 01, 2021) and must move out of the rental unit.

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.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act.

As such, I make no findings as to the truth of the landlord's allegations about the conducts of the tenant.

As the tenant was not successful in his application, the tenant is not entitled to recover the filing fee.

Conclusion

I dismiss the tenant's application without leave to reapply. The tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

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: June 07, 2021

Residential Tenancy Branch