



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRITISH COLUMBIA KINSMEN HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC FFT

Introduction

This hearing dealt with the tenants' applications 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant SA attended the hearing by way of conference call with their advocate and interpreter, the landlord did not. I waited until 9:43 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant and their advocate were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 tenant, their advocate, interpreter, and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord's agent LG was personally served with the tenants' application on April 9, 2021, and their evidence package on July 7, 2021. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenants' application and evidence for this hearing. The landlord did not submit any written evidence for this hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

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.

The tenant confirmed that they had a duplicate application in error. The tenant confirmed that they had been served with a 1 Month Notice dated March 23, 2021, which they were disputing as part of this application. The tenant also confirmed that they were not proceeding with their application under section 62 for the landlord to comply with the Act. Accordingly, the hearing proceeded with the tenants' application to cancel the 1 Month Notice dated March 23, 2021, and for recovery of the filing fees. The other portion was withdrawn.

Issues

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recovery of his filing fee for this application from the landlord?

Background and Evidence

The tenants provided the following undisputed testimony as the landlord did not attend.

This month-to-month tenancy began on November 1, 2016. The tenant testified in the hearing that they are responsible for \$795.00 in subsidized rent for this tenancy. The tenant testified that they were served with a 1 Month Notice on March 23, 2021, and that they dispute that this tenancy should end on the grounds provided on the 1 Month Notice. The tenants request the cancellation of the 1 Month Notice as well as recovery of the filing fee.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application within the time limit required under the *Act*, the onus, therefore, shifts to the landlord to justify that the tenancy should end on the grounds provided on the 1 Month Notice.

In the absence of any evidence or submissions from the landlord in this hearing, I find that the landlord has not provided sufficient evidence to demonstrate that this tenancy should end on the grounds provided on the 1 Month Notice. Under these circumstances, I am

allowing the tenants' application to cancel the landlord's 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for one of the applications. As the tenants filed a duplicate application in error, I dismiss the tenants' application to recover the second filing fee without leave to reapply.

Conclusion

I allow the tenants' application to cancel the 1 Month Notice, which is hereby cancelled. The 1 Month Notice dated March 23, 2021 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

I dismiss the tenants' application to recover the filing fee on the second duplicate file without leave to reapply. The tenants withdrew their application under section 62 for the landlord to comply with the *Act*.

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: July 27, 2021

Residential Tenancy Branch