



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding superman property management inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC
 OPC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants (the Tenants' Application) on August 11, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Cancellation on a One Month Notice to End Tenancy for Cause (the One Month Notice).

This hearing also dealt with a Cross-Application for Dispute Resolution filed by the Landlord (the Landlord's Application) on August 23, 2021, seeking:

- An Order of Possession for the rental unit based on the One Month Notice.

The hearing was convened by telephone conference call on December 16, 2021, at 11:00 A.M. and was attended by the Tenants, both of whom provided affirmed testimony. Although the line and the hearing remained open until 11:18 A.M., no one attended on behalf of the Landlord. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Tenants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenants were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The Tenants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Landlord did not attend the hearing, I confirmed service of these documents as explained below.

The Tenants testified in the hearing that the Application and the Notice of Hearing were personally served on an agent for the Landlord on September 2, 2021, two days after they received them from Service BC on August 30, 2021. Records at the Residential Tenancy Branch (the Branch) indicate that the Notice of Dispute Resolution Proceeding Package, which includes the Application and the Notice of Hearing, was made available to the Tenants for pick-up at Service BC on August 30, 2021, for service on the Landlord by September 2, 2021.

Based on the uncontested and affirmed testimony of the Tenants and the Branch records set out above, I am satisfied that the Landlord was personally served with the Tenants' Application and the Notice of Hearing as required by the *Act* and the Rules of Procedure, on September 2, 2021. Further to this, I note that the Landlord's Application was set to be heard during the same hearing, and that Branch records indicate that the Landlord was provided with the Notice of Hearing because of their own Application on September 9, 2021, by email, as per their request on their Application. Finally, Branch records on both files indicate that the parties confirmed in November of 2021, that the hearing was still required. As a result, I am satisfied that the Landlord was aware of the date and time of the hearing, how to attend, and the requirement for their attendance.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I confirmed that the hearing information contained in the Notice of Hearing for the Tenants' Application and the Landlord's Application matched and was correct. As a result of the above and as the Tenants and I attended the hearing on time and ready to proceed, I therefore commenced the hearing as scheduled. Rule 7.3 of the Rules of Procedure states 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 reapply. As the Landlord failed to appear at the hearing of their own Application, or to have an agent appear on their behalf, I therefore dismiss the Landlord's Application without leave to reapply pursuant to rule 7.3 of the Rules of Procedure.

I therefore proceeded only with the hearing of the Tenant's Application seeking cancellation of the One Month Notice as scheduled despite the Landlord's absence.

Although I have reviewed all evidence and testimony before me that I have accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Tenants, a copy of the decision will be sent to them at the email address confirmed in the hearing. A copy of the decision will also be sent to the Landlord in the manner requested by them in their Application.

Preliminary Matters

Preliminary Matter #1

The Tenant R.H. stated that their phone number had changed and provided me with the correct number. The Application was therefore amended pursuant to rule 4.2 of the Rules of Procedure and the Dispute Management System records were updated accordingly.

Preliminary Matter #2

I asked the Tenants if the names listed for them on the Tenants' Application were their full legal names and they stated that they were not. The Tenants provided me with their middle names, which they stated were missing from their Application. The Tenants' Application was therefore amended pursuant to rule 4.2 of the Rules of Procedure and the Dispute Management System records were updated accordingly.

Issue(s) to be Decided

Does the Landlord have cause to end the tenancy under section 47 of the *Act*?

Is the Landlord entitled to an Order of Possession pursuant to section 55(1) of the *Act*?

Background and Evidence

The Tenants stated that a tenancy under the *Act* exists between them and the Landlord, and that they received the One Month Notice, which was posted to their door, on August 1, 2021. Branch records show that they filed their Application seeking its cancellation on August 11, 2021.

Although the Tenants did not submit a copy of the One Month Notice, a copy was submitted for my review and consideration by the Landlord. The One Month Notice is signed and dated July 31, 2021, has an effective date of August 31, 2021, and states that the reason for ending the tenancy is because the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk and the tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

The Tenants denied these allegations and stated that the Landlord does not have cause to end their tenancy under section 47 of the *Act*. No one appeared at the hearing on behalf of the Landlord to provide any evidence or testimony for my consideration in support of the issuance of the One Month Notice by the Landlord.

Analysis

Based on the affirmed and uncontested testimony of the Tenants, I am satisfied that a tenancy to which the *Act* applies exists, and that they received the One Month Notice from their door on August 1, 2021. As Branch records show that the Tenants disputed the One Month Notice on August 11, 2021, I therefore find that they disputed it within the legislative timeframe set out under section 47(4) of the *Act*.

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove the validity of a notice to end tenancy falls to the landlord.

As no one appeared on behalf of the Landlord at the hearing, I declined to consider the Landlord's documentary evidence, with the exception of the One Month Notice, pursuant to rule 7.4 of the Rules of Procedure.

As the Tenants denied the allegations made against them in the One Month Notice and the no one attended the hearing on behalf of the Landlord to provide any evidence or testimony in support of the One Month Notice, I find the Landlord has therefore failed to satisfy me on a balance of probabilities that they have cause to end the tenancy by way of the One Month Notice pursuant to section 47 of the *Act*. As a result, I therefore grant the Tenants' Application seeking cancellation of the One Month Notice and order that the tenancy continue in full force and effect until it is ended by one or both of the parties in accordance with the *Act*.

Conclusion

I order that the One Month Notice signed and dated on July 31, 2021, is cancelled and that the tenancy therefore continues in full force and effect until it is ended by one or both of the parties in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: December 16, 2021

Residential Tenancy Branch