



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) issued on July 28, 2021 and for an order for the Landlord to comply with the Act. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”) attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant in this hearing, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the Act.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice issued on July 28, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlords be ordered to comply with the *Act*?

Background and Evidence

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I called into the hearing, and the line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 1:40 p.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that they served the Notice to end tenancy to the Tenant by personal service on July 28, 2021. The Tenant submitted a copy of the Notice into documentary evidence.

It was noted that the Notice was signed and dated as August 28, 2021. The Landlord was asked to confirm the date of service and explain why their notice had a different date of service recorded in the notice?

The Landlord confirmed that the Notice was served on July 28, 2021 and that the Notice was date August 28, 2021 in error.

Analysis

I find that the Tenant's Application for Dispute Resolution has been abandoned.

Section 55(1) of the Act states:

Order of possession for the landlord

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 to the landlord an order of possession of the rental unit if*

- (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.*

Section 52 of the Act states the following regarding a notice to end tenancy:

Form and content of notice to end tenancy

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

I have reviewed the Notice to end tenancy issued by the Landlord and noted that the signature date recorded on this Notice is dated one month after this Notice was issued. As section 52(a) of the Act require that a Notice be signed and dated, I find that the incorrect signature date on this Notice means that this Notice does not meet the form and content requirements set out by the Act, for a notice to end tenancy.

Consequently, I find that the Notice issued on July 28, 2021, is not a valid Notice to end a tenancy, and therefore can not be enforced.

Conclusion

I dismiss the Tenant's application.

I find that the Notice dated August 28, 2021 does not comply with section 52 of the *Act* and is not enforceable.

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: December 13, 2021

Residential Tenancy Branch