



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1150741 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated September 9, 2021 ("One Month Notice").

The Tenant and an advocate for the Tenant ("Advocate") appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and his Advocate, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, were the Tenant and his Advocate.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Advocate testified that the Tenant served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on approximately September 26, 2021. The Advocate was unable to provide the Canada Post tracking number, as evidence of service, as she did not have it with her. However, based on the Parties'

testimony, I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and he confirmed his address in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Tenant that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Rule 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Usually, this is the person applying for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. Therefore, the burden of proof is on the Landlord in this proceeding.

Further, when a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Tenant confirmed the details of the tenancy agreement, which states that the periodic tenancy began on January 1, 2021, with a current monthly rent of \$812.02, due on the first day of each month. The Tenant confirmed that he paid the Landlord a security deposit of \$400.00, and no pet damage deposit.

The Tenant submitted a copy of the One Month Notice with which he was served by the

Landlord. The One Month Notice that was signed and dated September 9, 2021, it has the rental unit address, it was served in person on September 9, 2021, with an effective vacancy date of October 31, 2021. The One Month Notice was served on the grounds that the Tenant or a person permitted on the property by the Tenant has: significantly interfered with or unreasonably disturbed another occupant or the Landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant; and has jeopardized a lawful right or interest of another occupant or the Landlord.

The Tenant denied the allegations on the One Month Notice; he said that since applying for dispute resolution, he and the Landlord signed an addendum to the tenancy agreement, and they agreed that everything is fine with the tenancy. No one attended on behalf of the Landlord to dispute this testimony.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

As noted above, the burden of proof in this matter is on the Landlord; however, the Landlord did not attend the hearing by 11:10 a.m. to present any evidence or submission in support of the One Month Notice. I find that the Landlord has failed to show cause to end the tenancy.

I, therefore, grant the Tenant's Application to cancel the One Month Notice issued on September 9, 2021; the One Month Notice is cancelled and is of no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Conclusion

The Tenant is successful in his Application to cancel the One Month Notice, as the Landlord failed to attend the hearing to present the merits of the One Month Notice. As the burden of proof is on the Landlord in this matter, the One Month Notice is cancelled and is of no force or effect.

The tenancy will continue until legally ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 31, 2022

Residential Tenancy Branch