



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1269123 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, LRE, OLC, FFT

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 August 31, 2021 ("One Month Notice"); to suspend or restrict the Landlord's right to enter; for an order directing the landlord to comply with the Act, regulation, or tenancy agreement; and to recover the \$100.00 cost of his Application filing fee.

The Tenant appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Landlord. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that he was 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, was the Tenant.

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 Tenant testified that he served the Landlord with the Notice of Hearing documents by Canada Post registered mail, sent on January 5, 2021. The Tenant provided Canada Post tracking numbers as evidence of service. 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.

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 who applied for the hearing. However, when a tenant applies to cancel an eviction notice, 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. As such, the burden of proof is on the Landlord to prove the validity of the One Month Notice on a balance of probabilities.

Preliminary and Procedural Matters

The Tenant provided his email address in the Application, but he did not know the Landlord's email address; rather, we will send the Landlord the decision at the address provided in One Month Notice. They confirmed their 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 Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

In the hearing, I advised the Tenant that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I advised the Tenant that I found that not all of the claims in his Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the One Month Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

The onus to prove their case is on the person making the claim. Usually, this is the person who applied for a hearing. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel an eviction notice.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenant confirmed that the periodic tenancy began on August 1, 2019, with a monthly rent of \$2,500.00, due on the first day of each month. The Tenant advised that he paid the Landlord a security deposit of \$1,750.00, and no pet damage deposit.

The Tenant submitted a copy of the One Month Notice that he received from the Landlord. The Tenant said that the One Month Notice was in a blank white envelope slipped through the mail slot. The One Month Notice was signed, and dated August 31, 2021 and it has the rental unit address; however, the Tenant was not sure on what day it was served this way. It has an effective vacancy date of September 30, 2021; however, the One Month Notice that the Tenant received did not have a back page or any indication of the grounds of the eviction.

Analysis

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

This matter was set for hearing by telephone conference call at 9:30 a.m. on the date of this Decision. The teleconference line remained open while the phone system was monitored for over 20 minutes, but the only participant to call into the hearing during this time was the Tenant.

Since the Landlord did not attend the hearing by 9:10 a.m. to present any evidence or submission in support of the One Month Notice, and the burden is on the Landlord to prove the One Month Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy. Further, the Landlord failed to serve the entire One Month Notice to the Tenant, and therefore, I cannot determine if it is compliant with section 52 of the Act as to form and content.

I, therefore, grant the Tenant's Application to cancel the One Month Notice issued on August 31, 2021, and I find that the One Month Notice has no force or effect. The

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

As the Tenant was successful with his Application, I find that he is entitled to recover the **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. I, therefore, authorize the Tenant to deduct **\$100.00** from one future rent payment to the Landlord in complete satisfaction of this award.

Conclusion

The TT 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. The One Month Notice is cancelled and is void and unenforceable. The tenancy will continue until legally ended in accordance with the Act. The Tenant's other claims are dismissed with leave to reapply, pursuant to section 62 of the Act.

The Tenant is awarded recovery the **\$100.00** Application filing fee from the Landlord, pursuant to section 72 of the Act. I, therefore, **authorize the Tenant to deduct \$100.00 from one future rent** payment to the Landlord in complete satisfaction of this award.

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: January 24, 2022

Residential Tenancy Branch