



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's application 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;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence.

The tenant was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on September 22, 2021. The tenant referenced a submitted copy of a Canada Post Customer Receipt dated September 22, 2021. The Canada Post Customer Tracking Number is noted on the cover of this decision. A review of the Canada Post website's tracking history of this package shows that it was received and processed on September 22, 2021 and delivered on September 29, 2021. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per section 89 of the Act and despite not attending is deemed served on September 29, 2021 as per section 90 of the Act.

During the hearing the tenant stated that she understood the issues of the proceeding and stated that other than some grammar issues would have no problem. Throughout

the hearing the landlord was given direct questions and was unable to answer the questions without referring to an unrelated issue. The tenant stated that she did understand and had no issues comprehending the questions. I find despite the tenant's assurances, the tenant is advised to strongly consider obtaining assistance in either an agent or a qualified translator to assist the tenant.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 month notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2020 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 31, 2020. The monthly rent was \$625.00 payable on the 1st day of each month. A security deposit of \$295.00 was paid on August 1, 2020.

The tenant confirmed being served on August 31, 2021 with the 1 Month Notice dated August 31, 2021 in person. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2021 and that it was being given as:

- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The details of cause state:

What: The tenant, R.M. is subletting unit 102 without the landlords written consent, at....

Who caused the issue: The tenant, R.M. on August 13, 2021 did sublet unit 102...without the landlord's written consent.

The tenant disputes the landlord's claims and also stated that the landlord has changed the locks to the rental unit and refuses to give her access. The tenant stated that the rental premises was used for her employees.

Analysis

Section 47 (i) of the Act states in part that a landlord may end a tenancy if the tenant assigns or sublets the tenancy without first obtaining the landlord's written consent.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of the tenant and find in the absence of the landlord's participation or the submission and presentation of any evidence that the landlord has failed to establish a claim to support his reasons for cause. On this basis, the tenant's application to cancel the 1 month notice dated August 31, 2021 is granted. The 1 month notice dated August 31, 2021 is set aside and the tenancy shall continue.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant's application is granted.

The tenant is granted a monetary order for \$100.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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 17, 2022

Residential Tenancy Branch