



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 Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the One Month Notice to End Tenancy for Cause dated October 25, 2021 (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 11:30 am in order to enable the Tenants to call into this teleconference hearing scheduled for 11:00 am. The Landlord's building manager ("TC") and Landlord's property manager ("RM") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that TC, RM and I were the only ones who had called into this teleconference.

TC testified the Tenants had only served part of the Notice of Dispute Resolution Proceeding ("NDRP") on the Landlord in-person. TC stated that she attended at the Burnaby Office of the Residential Tenancy Branch on November 23, 2021 where she was provided with a courtesy copy of the NDRP. TC stated that, although the Landlord was not properly served with the NDRP by the Tenants, the Landlord desired to proceed with the hearing. I find that the Landlord was sufficiently served with the NDRP pursuant to section 71(2)(b) of the Act.

TC stated that the Tenants had not served any evidence on the Landlord. TL testified the Landlord served their evidence by placing it through the Tenants' mail slot on December

21, 2021. I find that the Tenants were served with the Landlord's evidence pursuant to section 88 of the Act.

Preliminary Matter – Effect of Non-Attendance by Tenants

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not attend the hearing within 10 minutes of its commencement, the Tenants' application is dismissed without leave to reapply.

The Tenants' claim for the filing fee for their application is dismissed without leave as the Tenants failed to attend the hearing to present the merits of their application.

Preliminary Matter – Landlord's Entitlement to Seek Order of Possession

Section 55(1) of the Act states:

- 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.

TL testified the Tenants are still living in the rental unit and that the Tenants have paid the rent until December 31, 2021. As I have dismissed the Tenants' application, I must

grant to the Landlord an order of possession if the 1 Month Notice complies with section 52. I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52. Pursuant to section 55(1) of the Act, I order that the Tenants provide the Landlord with vacant possession of the rental unit effective at 1:00 pm on December 31, 2021 after service of this Order on the Tenants.

Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlord is provided with an Order of Possession effective at 1:00 pm on December 31, 2021. This Order must be served by the Landlord on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 9, 2022

Residential Tenancy Branch