



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her two advocates and the two landlords.

The landlord acknowledged receipt of the tenant's Application, Notice of Hearing documents; and evidence in September or October 2021. The landlord served evidence to the tenant via email one week prior to the hearing, however no evidence was uploaded to the RTB evidence site. The tenant's advocate confirmed he had reviewed the landlord's evidence and was prepared to respond.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 55 of the *Residential Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 52 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a One Month Notice to End Tenancy for Cause, pursuant to Section 47 of the *Act*.

Should the tenants fail to succeed in cancelling the One Month Notice to End Tenancy for Cause, it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 52 and 55 of the *Act*.

Background and Evidence

The tenant submitted a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on August 24, 2021 with an effective vacancy date of October 1, 2021

citing the rental unit must be vacated to comply with a government order. In the details of event section of the Notice the landlord wrote:

“The Notice was served by the city of New West May 3, 2019 regarding unit 3 and unit 4 to be non-conforming and unsafe to live no bedroom windows and was constructed without city approval no permits.” [reproduced as written]

In addition, the tenant submitted a copy of a previous Residential Tenancy Branch (RTB) decision dated August 18, 2021 (file number provided on the coversheet of this decision). In that decision, the tenant had disputed a One Month Notice to End Tenancy for Cause issued by the landlord on June 30, 2021 citing the tenancy must end because the rental unit must be vacated to comply with a government order.

During the hearing the tenant’s advocate referred to an additional hearing that was held in April 2021, after the landlord had issued the first One Month Notice to End Tenancy for Cause citing the cause was that they had to comply with a government order.

The tenant submitted a copy of a “Notice of Violation” issued by the local municipal fire and rescue services dated May 3, 2019 citing, among other things,

“You are required to vacate units 3 and 4 in the basement because of the life safety deficiencies in these units. Within 7 days of this notice, please provide proof of the 4 month notice to end tenancy.” [reproduced as written]

The landlord acknowledged that he served the tenant with a new One Month Notice to End Tenancy for Cause on August 24, 2021 (the date he heard the August 18, 2021 decision). The landlord confirmed that there had been no new developments or changes in the conditions that required him to end the tenancy. He stated that he issued the new notice because his evidence had not been considered in the last hearing and was trying to make sure he did things correctly.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black’s Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

I find the landlord has attempted to end this tenancy for the same cause based on a local government order from May 2019 with no changes in circumstances on three occasions. I also find that the original decision of April 2021 did not address the merits

of the Notice as the landlord did not attend that hearing but that the merits of the cause for ending the tenancy were adjudicated in the August 2021 hearing. I find that as a result of the August 18, 2021 decision the cause identified by the landlord to end the tenancy was the subject of a final judgement on the merits and as such the matter is *res judicata*. As a result, I find the matter is resolved and the landlord could not issue a new One Month Notice to End Tenancy for Cause citing the same cause.

Conclusion

Based on the above, I grant the tenant's Application and cancel the One Month Notice to End Tenancy for Cause issued on August 24, 2021. I order the tenancy remains in full force until ended in accordance with the *Act*.

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 10, 2022

Residential Tenancy Branch