



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: CNC MNDCT RP RR PSF

Introduction

The tenant applied for various relief under the *Residential Tenancy Act* (the “Act”), including a dispute of a *One Month Notice to End Tenancy for Cause* (the “Notice”).

A dispute resolution hearing was convened on Friday, September 2, 2022 at 11:00 AM. An agent for the property management company attended the hearing, while the tenant did not. The hearing ended at 11:10 AM.

The agent provided a correct spelling of the landlord’s name (P.A.) and clarified that the respondent listed in the tenant’s application was an agent for the landlord, but not as a party to the tenancy agreement. As such, the correction of the landlord’s name and the removal of the respondent property management company have been made on the style of cause of this decision.

Preliminary Issue: Tenant’s Non-Attendance

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.

As the tenant did not attend the hearing, they have not proven any of the claims made in their application. Therefore, the tenant’s application for various relief under the Act is dismissed, without leave to reapply. The only remaining issue is whether the landlord is entitled to an order of possession based on the Notice.

Issue

Is the landlord entitled to an order of possession?

Background and Evidence

The agent provided sworn testimony that the Notice—a copy of which was submitted into evidence—was served by him on the tenant in person on or about April 29, 2022. The Notice indicated that the tenancy was being ended because the “Rental unit/site must be vacated to comply with a government order”. Further details at the bottom of the Notice on page two indicate that the rental “Unit is non conforming to city Bylaws & must be removed.”

The agent referred to City of Kelowna Bylaw Services correspondence given to the landlords indicating that two rental units (including the rental unit that is the subject of this application) are illegal and that they must be decommissioned. Decommissioning requires the removal of any tenants in the units. The agent explained that the house in which the rental units are located is located with municipal zoning that only permits single family dwellings.

Analysis

When a tenant applies to dispute a notice to end tenancy the onus shifts to the landlord who must prove, on a balance of probabilities, the reason or ground on which the notice is being given.

The Notice in this dispute was given under section 47(1)(k) of the Act which states that a landlord may end a tenancy by giving notice to end the tenancy if “the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority”.

In this case, the municipal government authority has ordered the decommissioning of the rental unit, which means that it must be vacated in order to comply with the bylaws of the municipality. The sworn oral and documentary evidence persuades me to find, on a balance of probabilities, that the landlords have the legal right to end the tenancy under section 47(1)(k). The reason for ending the tenancy is set out in the Notice.

Having further reviewed the Notice it is my finding that the Notice complies with section 52 of the Act in form and content. The tenant’s application to cancel the Notice is hereby dismissed.

Pursuant to section 55(1) of the Act, having dismissed the tenant’s application, the landlords are granted an order of possession of the rental unit.

A copy of the order of possession—which must be served by the landlords or their agent upon the tenant—is issued to the landlords in conjunction with this decision. The order of possession is enforceable in the Supreme Court of British Columbia.

Conclusion

The application is hereby DISMISSED, without leave to reapply.

The landlords are GRANTED an ORDER OF POSSESSION of the rental unit.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: September 2, 2022

Residential Tenancy Branch