



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC

Preliminary and Procedural Matters-

This telephone conference call hearing was convened as the result of the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlords and an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlords.

The hearing began as scheduled at 11:00 am, Pacific Time, on Friday, October 21, 2022, and the telephone system remained open and was monitored for 40 minutes. During this time, the applicant/tenant did not dial into the telephone conference call hearing; however, the landlord was present and ready to proceed with the hearing. The landlord was affirmed.

In speaking with the landlord, it was confirmed that the landlords' names were listed incorrectly in the tenant's application. I find it necessary to amend the tenant's application to reflect the correct names of the landlords. Those changes are reflected on the cover page of this Decision.

The landlord also said she received the tenant's application only, no evidence. In discussion, it transpires that the tenant served the landlord a different paper application than he filed with the Residential Tenancy Branch (RTB). The same issues were not listed on the two applications. It was not clear why this was the case.

The landlords filed evidence for the dispute, but did not include a copy of the 1 Month Notice or the 10 Day Notice. The landlord said she thought the tenant filed this evidence as it was his application.

During the hearing, the landlord said that the tenant has begun to move out of the rental unit, which is in the lower unit of the home owned and occupied by the landlords on the upper floor; however, the landlord said that she was not sure if the tenant had fully moved out. The landlord said that they require an order of possession of the rental unit due to the uncertainty of whether the tenant has moved out.

While waiting for the tenant to appear, the landlord testified in support of the landlord's Notice. The Notice was dated May 24, 2022, with an effective move out date of June 24, 2022. The tenant confirmed in his application receiving the 1 Month Notice on May 24, 2022, when it was attached to the door. The landlord marked as cause for ending the tenancy that the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The landlord said the tenant continued to interrupt the quiet enjoyment of the other tenant and the landlords, despite continued requests to stop. The landlord wrote in the 1 Month Notice the dates of the quiet enjoyment disruptions, which included continued loud talking and noises during quiet hours. The landlord submitted that the tenant left the dryer on one night so that it ran the entire night, creating disturbing noises and danger to the landlord's property. The landlord submitted copies of the warnings and notices to the tenant.

Due to the inconsistent applications served by the tenant to the RTB and landlords, I allowed the landlord to upload the 1 Month Notice in question after the hearing. The landlord was informed that I would consider the 1 Month Notice if it was uploaded by the end of the business day. The landlord uploaded the 1 Month Notice immediately after the hearing, and I find it was consistent with her testimony. I therefore accepted the 1 Month Notice in evidence.

Analysis and Conclusion

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

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 that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenant at the hearing or filed evidence, I **order** the tenant's application **dismissed, without leave to reapply**.

Upon review, I find the Notice was on the RTB approved form with content meeting the statutory requirements under section 52 the Act.

Given the above, pursuant to section 55(1) of the Act, I **must** grant an order of possession of the rental unit to the landlord.

I therefore grant the landlord an order of possession of the rental unit effective and enforceable two (2) days after service on the tenant, as the effective move-out date has passed.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **including bailiff fees**, are recoverable from the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 21, 2022

Residential Tenancy Branch