



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 4, 2022 (2 Month Notice).

The tenant was provided with a copy of the Notice of a Dispute Resolution Proceeding dated July 7, 2022 (Notice of Hearing) when they made their application. The tenant, however, did not attend the hearing set for this date, November 4, 2022 at 11:00 a.m. Pacific Time. The phone line remained open for 16 minutes and was monitored throughout this time. The only person to call into the hearing was the landlord.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing and stated that they understood that the Decision and any applicable orders would be emailed to them. The Decision will also be emailed to the tenant at the email address provided in their application.

Issues to be Decided

- Should the tenant's application be dismissed for failing to attend the dispute resolution hearing?
- If yes, is the landlord entitled to an order of possession under the Act?

Background and Evidence

The tenant submitted a copy of the 2 Month Notice, which is dated June 4, 2022 and has an effective vacancy date of August 31, 2022. The landlord confirmed that the tenant was served on June 8, 2022 by personal service, which is confirmed in the tenant's application.

The tenant filed their application to dispute the 2 Month Notice on June 20, 2022, which is within the 15-day timeline provided for under the Act.

In addition, the landlord submitted a copy of a Mutual Agreement to End Tenancy dated October 23, 2022 (Mutual Agreement), which was signed by both parties and indicates that the tenant will vacate the rental unit by the end of November 6, 2022.

The landlord testified that he intends to move into the rental unit while his current residence is being fully renovated. There is no mention of the Mutual Agreement replacing the 2 Month Notice or that the 2 Month Notice was mutually withdrawn by the parties. The landlord requested an order of possession effective at 6:00 p.m. on November 6, 2022.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3 apply and 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 that party, or dismiss the application, with or without leave to re-apply.

Given the above and following the 10-minute waiting period, the application of the tenant was **dismissed without leave to reapply**. This decision does not extend any applicable time limits under the Act.

Section 55(1) of the Act applies and states:

Order of possession for the landlord

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.**

[emphasis added]

I have reviewed the 2 Month Notice and find that it complies with section 52 of the Act. I also accept the undisputed testimony of the landlord that they intend to reside in the rental unit while their current residence is being fully renovated.

As the tenant failed to attend the dispute resolution hearing, and given that I find the 2 Month Notice is both valid and complies with section 52 of the Act, I grant the landlord an order of possession **effective November 6, 2022 at 6:00 p.m.**

I find the tenancy ended on August 31, 2022, which was the effective vacancy date of the 2 Month Notice. I also find that the tenancy ended by way of the 2 Month Notice and not the Mutual Agreement between the parties. I find this as the effective vacancy date came before the October 23, 2022 Mutual Agreement.

Should the tenant fail to vacate the rental unit as indicated on the order of possession, the tenant should be aware that they could be held liable for all costs related to enforcing the order of possession. If required, the landlord may enforce the order of possession by making an application for a Writ of Possession in the Supreme Court of British Columbia.

This Decision will be emailed to both parties at the email addresses confirmed by the landlord and the email address for the tenant provided in their application.

The order of possession will be sent to the landlord only, which must be served on the tenant.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: November 4, 2022

Residential Tenancy Branch