



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code CNC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on October 21, 2022. The Tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause dated October 7, 2022 (the One Month Notice) and to recover the filing fee, pursuant to the Residential Tenancy Act (the Act).

The Tenant attended the hearing and was very capably represented by RW, an articulated student. The Landlord was represented at the hearing by DS, an agent. Both the Tenant and DS provided a solemn affirmation at the beginning of the hearing

The Tenant testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by hand. The Landlord acknowledged receipt on November 16, 2022.

The Landlord testified that the documentary evidence in response to the Tenant's application was served on the Tenant in person on November 29, 2022, and that service in this manner was witnessed by JW. A signed Proof of Service document was submitted in support. The Tenant acknowledged receipt. However, during the hearing, RW raised issues with respect to redactions to complaint letters provided with the Landlord's evidence. However, for the reasons provided below, it has been unnecessary to consider the procedural issues put forward by RW.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on March 1, 2021. Rent of \$1,192.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$587.50, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

On behalf of the Landlord, DS testified the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on October 7, 2022. A copy of the One Month Notice was submitted into evidence. During the hearing, the Tenant confirmed receipt of the One Month Notice on Saturday, October 8, 2022.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47 of the Act permits a landlord to end a tenancy by giving a notice to end tenancy. The notice to end tenancy must comply with the form and content requirements of section 52 of the Act. A tenant has ten days after receipt of a notice to end tenancy issued under this section to dispute it. Failure to dispute the notice to end tenancy in this time results in the conclusive presumption the tenant has accepted the tenancy ends on the effective date of the notice and must vacate the rental unit.

In this case, the Tenant acknowledged receipt of the One Month Notice on October 8, 2022. Accordingly, the Tenant had until October 18, 2022 to dispute the One Month Notice. However, the Tenant's application was not made until October 21, 2022. I find that the Tenant's application was made late, contrary to section 47 of the Act. I also note the Tenant did not request an order granting an extension of the time limit to dispute the One Month Notice.

Further, having examined the One Month Notice submitted into evidence, I note that it is signed and dated, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form. Therefore, I find the One Month Notice complies with the form and content requirements of section 52 of the Act.

Considering the above, I find that the Tenant disputed the One Month Notice three days after the time limit to do so expired. As the Tenant did not dispute the One Month Notice on time, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice and must vacate the rental unit. Therefore, I find that the Tenant's application to cancel the One Month Notice is dismissed without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, section 55(1) of the Act requires that I grant an order of possession to the landlord. The language in the Act is mandatory. As noted above, I have found that the One Month Notice complies with section 52 of the Act and the Tenant's application has been dismissed. Accordingly, pursuant to section 55(1) of the Act, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act, I grant the Landlord an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in 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: December 9, 2022

Residential Tenancy Branch