



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HUGH AND MCKINNON PROPERTY MANAGEMENT REALTY LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, MNDCT, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Section 47 of the Act;
2. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act;
3. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, Property Manager Assistant, the Tenant, and her two supports, HR and JS attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice by Canada Post registered mail on July 25, 2022. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the One Month Notice was deemed served on the Tenant on July 30, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on August 22, 2022 by Canada Post registered mail (the “NoDRP package”). The Tenant referred me to the same Canada Post registered mail tracking number which the Landlord used to serve the One Month Notice as proof of service. The Landlord did confirm receipt of the Tenant’s NoDRP package on September 16, 2022. I find that the Landlord was sufficiently served with the NoDRP package on September 16, 2022 in accordance with Sections 71(2)(b) of the Act.

Preliminary Matter

Unrelated Claims

Prior to the parties’ testifying, I advised them that RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on the application. The Tenant and her supports claim the Landlord gave false evidence in a previous hearing in this matter. The Tenant and her supports also claim that they were never given guidelines, but rather were sent straight to settlement in the last hearing. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenant’s request to cancel the One Month Notice and the claim for recovery of the application filing fee at this proceeding. The Tenant’s other claims are dismissed, with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord’s One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties and tenancy agreement confirmed that this tenancy began as a fixed term tenancy on December 1, 2011. The fixed term ended on December 1, 2012, then the tenancy continued on a month-to-month basis. Monthly rent is \$842.00 payable on the first day of each month. A security deposit of \$400.00 was collected at the start of the tenancy and is still held by the Landlord.

The parties settled this matter on December 8, 2022. An Order of Possession was issued to the Landlord for January 15, 2023 at 1:00 PM. The Landlord testified that the lawyer for the owner is filing for a writ of possession in the Supreme Court of British Columbia in the next few days. The Landlord said she has spoken to support HR. They do not want to engage the services of a bailiff, but they will.

The Tenant's support JS said they are going to be filing for a review consideration. The Tenant's support JS said that the Tenant wants an extension. The Tenant's adult son assists his mother as she needs his help for her daily living activities.

Both parties said this matter was to be cancelled after the settlement and Order of Possession was issued. It was not. The Landlord is going forward with its writ of possession.

Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Both parties testified that this matter was settled on December 8, 2022, although the Tenant's support JS said it felt forced. Either way, pursuant to Section 63 of the Act, the matter was settled. I cannot rehear the parties claims about the end of tenancy, and the Landlord is in the process of filing for a writ of possession. I find the tenancy ended on January 15, 2023 at 1:00 PM and the Tenant must vacate.

As the tenancy has ended, I dismiss the Tenant's claim seeking an Order for the Landlord to comply with the Act, Regulation and tenancy agreement.

For the benefit of the Tenant, she may wish to discuss with an Information Officer at the RTB the options available to her regarding her monetary claim which was dismissed with leave. An Information Officer can be reached at:

5021 Kingsway
Burnaby, BC
Phone: 250-387-1602 / 1-800-665-8779
Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

As the Tenant was not successful in her claim, I do not grant her recovery of the application filing fee.

Conclusion

The Tenant's application to cancel the One Month Notice and recover the application filing fee is dismissed without leave.

The Tenant's application for an Order against the Landlord to comply with the Act, Regulation and tenancy agreement is dismissed without leave.

The Tenant's monetary claim is dismissed with leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 23, 2023

Residential Tenancy Branch