



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: CNC OLC PSF FFT

Introduction

The tenant applied under the *Residential Tenancy Act* (Act) to cancel a 1 Month Notice to End Tenancy for Cause dated January 19, 2023 (1 Month Notice), for an order directing the landlord to comply with the Act, to provide services or facilities agreed upon but not provided and to recover the filing fee.

The parties and witness attended the teleconference hearing and were affirmed. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither party raised any concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and were advised that the decision will be emailed to both parties.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- If yes, should the filing fee be granted?
- If no, should an order of possession for the landlord be granted?

Background and Evidence

The parties confirmed there was no written tenancy agreement. The parties agreed that a verbal tenancy began on February 1, 2022.

The tenant confirmed that they were served with a 1 Month Notice. The tenant applied to dispute the 1 Month Notice within the 10-day timeline provided under the Act.

As a copy of the 1 Month Notice was not submitted for my consideration, the details of the 1 Month Notice were confirmed. The 1 Month Notice was dated January 19, 2023 as indicated by the landlord and as written on the tenant's application. The tenant contradicted their application by claiming the 1 Month Notice was dated January 29, 2023, which I will address later in this decision.

The effective vacancy date is listed as February 28, 2023. The parties confirmed that the 1 Month Notice was signed and dated. The 3 causes listed were confirmed as follows:

1. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
3. Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.

The Details of Cause were read during the hearing and a brief summary is listed below:

Due to tenant changing electrical work on November 13 (2022) landlord told the tenant not to do it again explaining the dangers and tenant agreed. However, on November 16 (2022) the tenant did further unauthorized tampering of electrical and heating system, this time bringing an unauthorized person along. Due to the tenant's unauthorized tampering the landlord stopped the work and called in a certified technician and repaired the immediate dangers and warned that they need to come back to repair the remaining items that were tampered with. The tenant was given verbal notice that the tenant disregarded.

The landlord testified that they did not issue a 1 Month Notice in writing sooner due to being busy with work. The landlord testified that the tenant tampered with the furnace and put a pipe through the wall causing a fire hazard.

As the landlord referred to “Sam” as the certified technician who repaired the damage to the furnace and witnessed the tampering the Witness was called in to the hearing and was affirmed. The Witness confirmed that the tenant had tampered with the furnace causing a problem with the venting which was not to code.

The tenant’s response to the Witness was that it was not true and denies any tampering with the furnace.

The landlord confirmed that rent for March 2023 has been paid but nothing for April 2023 yet as April has not started.

Analysis

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

Tenant request to cancel 1 Month Notice – Firstly, I find the tenant is not credible as they provided contradictory testimony. The tenant writes in their application that the 1 Month Notice is dated January 19, 2023 and during the hearing then claims it was dated January 29, 2023, which I find would be impossible as the application would pre-date the 1 Month Notice otherwise. Secondly, I find the landlord credible as their testimony was consistent with their witness and the witness was surprised to be called so I find was not coached in any way for their testimony. Therefore, I afford much greater weight to the landlord testimony over that of the tenant.

Based on the above, **I dismiss** the tenant’s application to cancel the 1 Month Notice and **I uphold** the landlord’s 1 Month Notice with an effective vacancy date of February 28, 2023.

Section 55 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]

As the tenant continues to occupy the rental unit, **I grant** the landlord an order of possession pursuant to section 55 of the Act **effective two (2) days after service on the tenant** as the effective vacancy date of the 1 Month Notice has already passed.

I find the tenancy ended February 28, 2023, which was the effective vacancy date listed on the 1 Month Notice.

As the tenant's application to cancel the 1 Month Notice was dismissed and the 1 Month Notice was upheld, **I find** it is not necessary to consider any other portion of the application.

The filing fee is not granted as the application has failed.

Conclusion

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I caution the tenant that they can be held liable for all costs related to enforcement of the order of possession including, but not limited to, court costs and bailiff fees.

The decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless 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: March 24, 2023

Residential Tenancy Branch