

## **DECISION**

### **Decision Summary**

The One Month Notice is cancelled and is of no effect.

The tenant's claims under section 32 and 70 and dismissed with leave to reapply.

The tenant is awarded \$100.00 for reimbursement of filing fee.

**Dispute Codes**      **CNC, RP, LRE, FFT**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### *Attendance*

The tenant attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

### *Service*

The tenant testified he served the landlord with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 27, 2023. The tenant submitted a copy of the receipt containing the tracking number. The tenant testified he subsequently spoke with the landlord's agent CO who acknowledged receiving the material.

In view of the tenant's supported testimony, I find the tenant served the landlord in compliance with the Act.

### *Attendance*

The landlord did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 28 minutes to allow the landlord the opportunity to call.

The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord was provided.

Rule 7.3 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 reapply.

*Preliminary Issue – Claims under sections 32 and 70*

The tenant alleged the landlord unlawfully entered the unit in November 2022.

I informed the tenant an information officer at the RTB may be able to assist by providing information about the rights and responsibilities of both parties according to the Residential Tenancy Act (RTA).

Further, I informed the tenant of The Compliance and Enforcement Unit (CEU) which ensures compliance with the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties.

The tenant requested the application under section 62 be withdrawn with leave to reapply.

The tenant's application under section 62 is accordingly withdrawn with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the One Month Notice?

*Analysis*

Section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a Notice issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the tenant's Application is dismissed and the landlord has issued a Ten-Day Notice that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's Notice, the onus to prove the reasons for ending

the tenancy transfers to the landlord as the landlord issued the Notice and seek to end the tenancy.

As the landlord did not attend and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I order that the tenant's application to cancel the One Month Notice is granted. The Notice is void and of no effect.

As the tenant has been successful in this Application, I grant the tenant an award for reimbursement of the filing fee of \$100.00 which he may deduct from rent on a one-time basis.

### *Conclusion*

The tenant's application to cancel the One Month Notice is granted. The Notice is of no effect.

The tenant's applications under sections 32 and 70 are dismissed with leave to reapply.

The tenant is granted an award of \$100.00 for reimbursement of the filing fee which may be deducted from rent on a one time basis.

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: April 14, 2023

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Residential Tenancy Branch