



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 910105752

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

**HOLLY JOHNSON
FABON ROBERT, Tenant(s)**

Applicant(s)

And

SUBRAMANI NANJUNDAPPA, Landlord

Respondent

Regarding a rental unit at: #1 3250 3RD AVE, PORT ALBERNI, BC

Date of Hearing: May 08, 2023, by conference call.

Date of Decision: May 08, 2023

Attending:

For the Landlord: Subramani Nanjundappa

For the Tenants: Holly Johnson
Fabon Robert
Steve Muisse, Advocate for Tenants



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DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenants' application, filed on March 28, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated March 21, 2023, and effective April 30, 2023 ("1 Month Notice"), pursuant to section 47.

The landlord, the two tenants, tenant HJ ("tenant") and "tenant FB," and the tenants' advocate attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 22 minutes from 11:00 a.m. to 11:22 a.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after this hearing.

The landlord confirmed that he owns the rental unit. He provided the rental unit address.

Both tenants confirmed that their advocate had permission to represent them at this hearing. The tenant identified herself as the primary speaker for the tenants at this hearing. Tenant FB agreed to same.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them, and they could hire a lawyer for same. They had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Both parties affirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Both parties were given an opportunity to settle and declined to do so.

I repeatedly cautioned the landlord about interrupting me, speaking at the same time as me, and arguing with me. I warned him that I could mute his telephone line and disconnect him from this hearing if he continued with this behaviour. He continued with this behaviour, despite my warnings, throughout this hearing. However, I allowed him to attend this full hearing, in order to provide submissions and testimony.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application.

The tenant confirmed receipt of the landlord's evidence. She said it was received shortly before this hearing and it was sent improperly by text message. I do not find it necessary to make findings regarding service of the landlord's evidence to the tenants because I did not make a decision regarding the merits of the tenants' application at this hearing.

Preliminary Issue – 1 Month Notice

Pursuant to section 55 of the *Act*, the landlord may be entitled to an order of possession, based on the 1 Month Notice, if the notice meets the requirements of section 52 of the *Act*.

The landlord stated that he did not have a copy of the 1 Month Notice in front of him during this hearing. He said that this was his first time, and he did not know that he needed to have a copy of the notice. He confirmed that this was a serious issue, and he wanted an order of possession against the tenants.

The landlord could not provide the details of the 1 Month Notice, including the date it was signed, the effective move-out date, or the reasons on the notice, because he did not have a copy in front of him during this hearing. The above information is required on a notice to end tenancy, pursuant to section 52 of the *Act*.

In their application, the tenants indicated that they received the landlord's 1 Month Notice on March 27, 2023, by way of registered mail. They filed this application to dispute the notice on March 28, 2023. The tenants filed their application within 10 days, pursuant to section 47 of the *Act*. Accordingly, it is the landlord's burden of proof, on a balance of probabilities, to prove that the notice was issued for a valid reason, which includes proving that it complies with section 52 of the *Act*.

The tenants filed this application on March 28, 2023, and this hearing occurred on May 8, 2023, so the landlord had ample time to prepare for this hearing and to have a copy of the 1 Month Notice in front of him. I informed him that the notice was the only matter to be decided at this hearing, as per the tenants' application, which he confirmed he received.

I offered the landlord the opportunity to withdraw the 1 Month Notice, during this hearing. He declined and said that he wanted a decision made.

I informed both parties that I could not determine whether the 1 Month Notice complies with section 52 of the *Act*, because the landlord who issued it, did not have a copy of it in front of him during this hearing, and could not confirm the above required information.

For the above reasons, I notified both parties that I could not issue an order of possession to the landlord against the tenants, based on the 1 Month Notice. I informed them that the 1 Month Notice was cancelled, and this tenancy continues.

The landlord became upset and said that he would apply for the same relief again. I informed him that he did not file this application, the tenants did. I notified him that he could not issue the same notice for the same reason, unless something new arises after this hearing. I informed him that he could not relitigate the same 1 Month Notice at a future RTB hearing, since it was cancelled.

Conclusion

The tenants' application is granted. The landlord's 1 Month Notice, dated March 21, 2023, is cancelled and of no force or effect. The landlord is not entitled to an order of possession against the tenants. This tenancy continues until it is ended in accordance with the *Act*.

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: May 08, 2023

Residential Tenancy Branch