



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, MNRT, AS, OLC, FT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on March 7, 2023, for a monetary order for money owed for the cost of emergency repairs, to be allowed to assign or sublet the rental unit, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Only the landlord appeared. This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the Applicant did not attend the hearing by 9:40 A.M, and the Respondent appeared and was ready to proceed. I proceeded in the absence of the tenants.

In this case, SG has been named in the application as a tenant. SG is not a tenant under the Act and is not listed on the tenancy agreement. SG is a subtenant of RR, the tenant. The landlord named in the application has no legal obligation to SG, nor can SG dispute the Notice. SG only ramification is against RR, their landlord. I have removed SG from the style of cause on the covering a page of this decision.

The landlord stated that they have their own application for an order of possession, which was filed before the tenant’s made their application and should have been joined. The landlord was informed that if the tenant’s application is dismissed, I must grant the landlord an order of possession and if so I would cancel the next hearing.

At the outset of the hearing the landlord confirmed they had not served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as stated in the application.

Therefore, I find this was an obvious error on the applicant's part and unnecessary to consider.

Issue(s) to be Decided

Should the Notice be cancelled?

Is the tenant entitled to a monetary order for emergency repairs?

Should the tenant be allowed to sublet the rental unit?

Background and Evidence

The tenant submits in their application that they received the Notice as follows:

Notice delivery date: Mar 3, 2023

Notice delivery method: Attached to the door

Description:

Have paid rent on 1st of every month since Nov of 2021 - have receipts.

However, the submissions of the tenant cannot be corrected as the Notice was issued on March 7, 2023. Filed in evidence is a copy of the Notice, which complies with section 52 of the Act.

The landlord testified that they served the tenant with the Notice on March 7, 2023, which was posted to the door. The landlord stated that because the tenant's had not disputed the Notice, they had filed their application for dispute resolution on March 21, 2023, seeking the order of possession. Filed in evidence is a photograph showing the Notice posted to the door.

The landlord stated that the tenant has asked them if they would enter into a new tenancy with SG; however, they will not consider that request until this matter is resolved.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, I accept the evidence of the landlord that the tenant was served with the Notice on March 7, 2023. The tenant was deemed to have received the Notice on March 10, 2023. The tenant's application was not filed until March 31, 2023.

I find the tenant did not file to dispute the Notice within the statutory limit as their last day to make their application was March 20, 2023. The tenant did not make an application for more time and have not presented any evidence that an exceptional circumstance occurred. I find the tenant is conclusively presumed under section 47(5) of the Act. Therefore, I dismiss the tenant's application without leave to reapply.

I find that the landlord is entitled to an Order of Possession effective two days after service on the Tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

As I have granted the landlord an order of possession based on the tenant's application and the requirements of section 55 of the Act. I find the hearing scheduled for June 2, 2023, is now moot as the tenancy has ended. Therefore, I find appropriate to cancel that hearing. The filed number has been noted on the covering page of this decision.

Further, the balance of the tenant's application is dismissed without leave to reply. Further this appears to be related to SG claiming for cost against the landlord. SG has not legal rights to claim against the landlord as they are not a tenant under the tenancy agreement. They are a subtenant of RR.

Conclusion

The tenant's application is dismissed without leave to reapply. The landlord is granted an order of possession. The hearing on the landlord's file scheduled for June 2, 2023 is cancelled.

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 11, 2023

Residential Tenancy Branch