



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes: CNC-MT DRI OLC

Introduction

The Tenant seeks various relief under the *Residential Tenancy Act* (the “Act”), including, most importantly, an order to cancel a notice to end the tenancy.

The Landlord, the Landlord’s agent, and an interpreter attended the hearing which commenced on July 6, 2023, at 9:30 a.m. by teleconference. The Tenant, who apparently thought that the hearing was an in-person hearing (they attended to the Residential Tenancy Branch’s Burnaby office), telephoned into the hearing at 9:38 a.m.

Preliminary Issue: Conclusive Presumption of Notice to End the Tenancy

The *One Month Notice to End Tenancy for Cause* (the “Notice”) was given by the Landlord by being posted on the door of the rental unit on March 3, 2023. A copy of the Notice was in evidence.

The Tenant filed their application for dispute resolution on March 6, 2023. However, the Tenant did not pay the application fee until March 15, 2023.

Pursuant to section 59(2) of the Act, an application for dispute resolution must be accompanied by the fee prescribed in the regulations. Thus, an application for dispute resolution cannot be considered made until the \$100.00 application fee is paid.

A tenant who intends to dispute a *One Month Notice to End Tenancy for Cause* has 10 days after the date the tenant receives such a notice to make an application for dispute resolution.

In this dispute, the Tenant testified that he received the Notice on March 3, 2023. Therefore, he had until March 13 to make an application for dispute resolution. However, because the Tenant failed to pay the required fee until after this date, the application for dispute resolution cannot be considered to have been made.

Pursuant to section 47(5) of the Act, a tenant who does not make an application within the 10-day period is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate by that date. As such, I need not consider the reasons or grounds for which the Notice was given.

Pursuant to section 55(2)(b) of the Act, because the Tenant did not make an application within the required time, the Landlord is entitled to an order of possession of the rental unit. A copy of the order of possession is issued with this decision to the Landlord, who must serve a copy of the order of possession upon the Tenant.

Given that the Notice has been upheld and an order of possession is issued by virtue of conclusive presumption, the remainder of the Tenant's claims for relief will not be considered and are accordingly dismissed.

Conclusion

The application is dismissed without leave to reapply.

The tenancy is hereby ordered ended effective immediately and the Landlord is granted an order of possession of the rental unit.

This decision is final and binding, is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: July 7, 2023

Residential Tenancy Branch