



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

On May 30, 2023, the Tenant finalized their Application at the Residential Tenancy Branch to dispute a One Month Notice to End Tenancy for Cause (the “One-Month Notice”). The Tenant amended their Application on August 1, 2023 to include a subsequent One-Month Notice issued by the Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 28, 2023. The Landlord attended the conference call hearing; the Tenant did not attend.

At the start of the hearing, the Landlord stated they received the Tenant’s Notice of Dispute Resolution Proceeding when the Tenant provided a copy in the Landlord’s mailbox.

Preliminary Matter – Tenant’s attendance

The Tenant did not attend the hearing, although I left the teleconference hearing open until 9:43am to enable them to call in to this teleconference hearing scheduled for 9:30am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant’s Application in its entirety, without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession in line with a notice to end tenancy, pursuant to s. 55 of the *Act*?

Background and Evidence

The Landlord confirmed that the reason they issued each One-Month Notice to the Tenant was for the reason of smoking. The Landlord pointed to paragraph 18 of the tenancy agreement as it appears in the evidence they provided for this hearing. This is explicit on the restrictions against smoking that the Landlord alleged the Tenant violated repeatedly.

The Landlord issued the first One-Month Notice on May 29, 2023, for the set end-of-tenancy date of June 30, 2023. This was for the reason of smoking at the rental unit property, in violation of the tenancy agreement. The Landlord indicated the grounds violated on page 2 of the document:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - put the landlord's property at significant risk.

The Landlord provided detail on page 2 of the document including dates and very specific descriptions on the Tenant's actions, and reactions to the Landlord notifying the Tenant of the violations of the rules.

The Landlord provided evidence to the Residential Tenancy Branch on July 26, 2023. In the summary of the issue they provided, they noted a subsequent discussion with the Tenant wherein the Tenant agreed to move out from the rental unit on August 31, 2023. In the hearing, the Landlord referred to a discussion they had with the Tenant on August 24 in which the Tenant stated they were already living elsewhere. Also in the hearing, the Landlord referred to the "activity feed" in which it was noted the Tenant would have a final rental unit inspection, scheduled with the Landlord for August 28, 2023 at 1:00pm.

Analysis

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant violates any of the items listed therein. This is for a tenancy end date that is "not earlier than one month after the date the notice is received" by a tenant.

In this dispute the Landlord issued the One-Month Notice on May 29, 2023. From the Landlord's testimony in the hearing, I find as fact that the tenancy will end by August 31, 2023.

As above, I have also dismissed the Tenant's Application for their non-attendance in the hearing.

Under s. 55 of the *Act*, when the Tenant's Application to cancel a notice to end tenancy is dismissed, and I am satisfied the document complies with the requirements of s. 52 regarding form and content, I must grant a landlord an order of possession.

On my review, I find the One-Month Notice served by the Landlord on May 29, 2023 complies with the requirements of form and content; therefore, the Landlord here is entitled to an Order of Possession. The tenancy is ending via the May 29 One-Month Notice; therefore, I order the subsequent One-Month Notice is void and of no force or effect.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the May 29, 2023 One-Month Notice, without leave to reapply.

I grant an Order of Possession to the Landlord, effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 28, 2023

Residential Tenancy Branch