



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (T) CNR, CNC, OLC, FFT
 (L) OPC, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenants' applications to cancel a One Month Notice to End Tenancy for Cause, issued May 25, 2023; and, the Landlords' cross-application for an Order of Possession based upon the One Month Notice issued May 25, 2023.

Issues to be Decided

- Are the Tenants entitled to cancellation of the One Month Notice?
- If the Tenants are not entitled to cancellation of either Notice, is the Landlord entitled to an Order of Possession?

Preliminary Matters

Based upon a review of Tenants A.M. and K.M.'s application for dispute resolution, the Landlord's application for dispute resolution, the One Month Notice to End Tenancy for Cause issued May 25, 2023 by the Landlord's representative Ke.C., a copy of the rental agreement and the testimony of the parties, I have determined it is appropriate to amend the Tenants' application to include Tenant R.A. as she is named in the rental agreement as the "tenant," she had submitted a written statement with evidence, and attended the hearing.

Additionally, based upon the evidence noted above, I further find it appropriate to amend the "landlord" named in Tenants' application to be Landlord B.D. and Landlord R.B., as the individuals identified as "landlord" on the Tenants' application are agents for Landlord B.D. and R.B.

Background and Evidence

Evidence submitted established that this tenancy began on May 1, 2019 for a fixed term to April 30, 2020 and thereafter on a monthly basis. The Tenants on the rental agreement were R.A. and M.A. Prior to this hearing, Tenant M.A. passed away. Tenant R.A.'s brother, S.A. also resides at the rental unit. Tenant R.A.'s daughter, A.M., and granddaughter, K.M., also resided in the rental unit but had moved out shortly before the hearing in this matter.

The Landlord's agent, Ke.C., issued a One Month Notice to End Tenancy on May 25, 2023. The Notice was served to the Tenant by posting on the door of the rental unit. The Landlord's agent submitted a completed proof of service. The Tenants' application states that the Notice was on the rental unit door and received May 26, 2023.

Although the Tenant A.M. stated on her application for dispute resolution that she was disputing a 10 Day Notice in addition to the One Month Notice, both parties at the hearing agreed that no 10 Day Notice had been issued and served that was the subject of this hearing. The Landlord's agent Ke.C. stated that the Tenants' rent was current.

A copy of the One Month Notice was submitted into evidence. Although it is an out-dated version of an RTB form, I find it complies with section 52 of the Act and the deviations between the older form and the current version do not affect its substance and are not intended to mislead the recipient. The Notice provides, under "Information for Tenants," that the tenant has 10 days from date of receipt of the Notice to apply for dispute resolution. If a tenant does not apply for dispute resolution within 10 days, the Notice states the tenant is presumed to accept the Notice and must move out of the rental unit on the date provided in the Notice. This comports with section 47(4) and 47(5) of the Act.

The Tenants' received the Notice on May 26, 2023 but their application for dispute resolution was not filed until June 13, 2023, after the 10 days within which to do so had passed. Therefore, I find, in accordance with sections 47(4) and 47(5) of the Act, that the Tenants' application to cancel the One Month Notice is untimely and the Landlord is entitled to an order of possession. While I heard testimony of the parties concerning the factual premise for the One Month Notice, I make no findings on the merits of the parties' respective allegations and submissions.

I dismiss the Tenants' application without leave to reapply. The One Month Notice issued May 25, 2023 is valid and the Landlord is granted an order of possession on that basis. Additionally, as the order of possession is based upon the Tenants' untimely application for dispute resolution, I dismiss the Landlord's application without leave to reapply, and decline to award the Landlord reimbursement of the filing fee. I make no findings on the merits of either the Tenants' or the Landlord's respective applications.

Policy Guideline 54 provides that an arbitrator may consider several factors when determining the effective date of an order of possession. These factors include, but are not limited to, the length of the tenancy and the point to which rent has been paid. I find that this is a tenancy of several years and that the Landlord's agent Ke.C. testified that the Tenant R.A. has paid rent on time during the tenancy. For these reasons and based upon a totality of the circumstances, I find that it is appropriate that the effective date of the order of possession be October 31, 2023 at 1:00 p.m.

Conclusion

I dismiss the Tenants' application for dispute resolution in its entirety, without leave to reapply, as the application was untimely under section 47 of the Act. As the One Month Notice is effective, and an order of possession is granted on the Tenants' application, I dismiss the Landlord's application for dispute resolution in its entirety, without leave to reapply.

I grant an Order of Possession to the Landlord effective **October 31, 2023 at 1:00 p.m.**, on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 20, 2023

Residential Tenancy Branch