



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord and the agent for the Landlord (the “Agent”), both of whom provided affirmed testimony. The Tenant did not attend. The Landlord and Agent attended the hearing at the scheduled time, ready to proceed, and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the Decision and any resulting Order of Possession will be sent to the e-mail address provided in the hearing.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55 of the *Act*?

Background and Evidence

The One Month Notice in the documentary evidence before me, dated September 13, 2017, has an effective vacancy date of October 31, 2017, and indicates the following reasons for ending the tenancy:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- The tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- The tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required.

The One Month Notice also indicates that on September 13, 2017, a copy of the One Month Notice was posted to the door of the Tenant's rental unit and the Landlord submitted a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") indicating that the One Month Notice was served in the manner described above.

The Tenant applied to cancel the One Month Notice; however, they did not appear at the hearing of their own Application to provide any evidence or testimony.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 89 of the *Act*, I find that the Tenant would be deemed served with the One Month Notice on September 16, 2017, three days after it was posted to the door of their rental unit. Despite these deeming provisions, the Tenant

submitted their Application on September 14, 2017, which included a copy of the One Month Notice. As a result, I find the Tenant received the One Month Notice on or before September 14, 2017.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the Tenant failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply. I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with Section 52 of the *Act*.

Section 52 of the *Act* states the following with regards to the form and content of a Notice to End Tenancy:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

The One Month Notice in the documentary evidence before me is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the One Month Notice, states the grounds for ending the tenancy, and is in the approved form. As a result, I find that the One Month Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. As the Agent confirmed in the hearing that November rent was accepted by the Landlord for use and occupancy only, the Order of Possession will be effective November 30, 2017, at 1:00 P.M.

Conclusion

The Tenant's Application is dismissed and pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on November 30, 2017, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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: November 15, 2017

Residential Tenancy Branch