



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FLETCHER VANTAGE WEST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on August 20, 2018. The matter was set for a conference call.

The Property Manager and Tenant attended the hearing and were each affirmed to be truthful in their testimony. They were both provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Should the Notice issued on August 20, 2018, be cancelled?
- If not, is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began on March 31, 2018. Rent in the amount of \$1,500.00 is to be paid by the first day of each month. At the outset of the tenancy, the Tenant paid a \$750.00 security deposit and a \$500.00 pet damage deposit. The Property Manager provided a copy of the tenancy agreement into documentary evidence.

The Property Manager testified that she served the Notice to the Tenant on August 20, 2018, by posting it to the Tenant's door. The Property Manager provided a copy of the Notice into documentary evidence.

The reasons checked off by the Agent within the Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice states that the Tenant must move out of the rental unit by September 30, 2018. The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

Analysis

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

I find that the Tenant received the Notice, posted to the front door of the rental unit, on August 23, 2018, pursuant to the deeming provisions stipulated in section 90 of the *Act*.

Section 47 of the *Act* states the following:

Landlord's notice: cause

47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Pursuant to section 47, I find the Tenant had until September 2, 2018, to file her application to dispute this Notice. I have reviewed the Tenant application for dispute resolution, and I find that the Tenant filed her application on September 6, 2018.

Therefore, I find that the Tenant filed to dispute the Notice outside of the legislated timeline and is therefore is conclusively presumed to have accepted the Notice and that her tenancy would end in accordance with that Notice. I find the Notice dated August 20, 2018, is valid and enforceable.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective not later than 2 days after service of the Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. Should the Tenant 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: October 18, 2018

Residential Tenancy Branch