



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL MANOR INN
and [tenant name suppressed to protect privacy]

CORRECTED DECISION

Dispute Codes CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant and his advocate attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant, his advocate and I were the only ones who had called into this teleconference.

The tenant's advocate testified that the landlord was served the notice of dispute resolution package by registered mail on October 10, 2018. The tenant's advocate provided the Canada Post Tracking Number to confirm this registered mailing and a printout from Canada Post showing that the package was picked up and signed for on October 16, 2018. I find that the landlord was deemed served with this package on October 16, 2018, in accordance with section 89 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

I note that Section 78 of the *Act* states that the director may, with or without a hearing:

(a) correct typographic, grammatical, arithmetic or other similar errors in his or her decision or order,

(b) clarify the decision or order, and

(c) deal with an obvious error or inadvertent omission in the decision or order.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the tenant and the tenant's advocate, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and his advocate's claims and my findings are set out below.

The tenant provided undisputed testimony that this tenancy began approximately six months ago ~~on~~ and is currently ongoing. Monthly rent in the amount of \$675.00 is payable on the first day of each month. A security deposit of \$337.50 was paid by the tenant to the landlord.

The tenant testified that on September 28, 2018 he received a One Month Notice to End Tenancy for Cause with an effective date of October 31, 2018 (the "One Month Notice").

The One Month Notice states the following reasons for ending the tenancy: breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The box stating "tenant or a person permitted on the

property by the tenant has (check all boxes that apply)” was checked but none of the sub- categories were checked. The One Month Notice further states that the “tenant unit is the subject of serious bed bugs infestation. Tenant is not cooperating in the pest control process and requirements. Unit needs to be vacated in order to exterminate. Tenant is smoking in the unit, a breach of a material term of the tenancy contract.” The One Month Notice was entered into evidence.

The tenant’s advocate testified that the tenant filed for dispute resolution on October 9, 2018.

Analysis

Based on the testimony of the tenant I find that service of the One Month Notice was effected on the tenant on September 28, 2018, in accordance with section 88 of the *Act*.

Upon review of the One Month Notice I find that it complies with the form and content requirements of section 52 of the *Act*. The only reason to end tenancy which is permitted to be considered is breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, as it was the only box properly checked.

Section 47(4) and section 47(5) state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

~~In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. 10 days from September 28, 2018, when the tenant received the One Month Notice, was October 8, 2018. The tenant filed to dispute the One Month Notice on October 9, 2018, one day late.~~

~~I find that, pursuant to section 47 of the *Act*, the tenant’s failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this~~

~~tenancy on the effective date of the notice. I therefore dismiss the tenant's application to cancel the One Month Notice.~~

~~In this case, since the effective date on the notice has passed, I find that the landlord is entitled to a 2 day Order of Possession, pursuant to section 55 of the Act. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.~~

The Residential Tenancy Branch Rules of Procedures states that if the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday. In my original decision dated November 16, 2018, I failed to consider that October 8, 2018 was a statutory holiday. Upon consideration of this fact, I find that the tenant had until October 9, 2018 to file to dispute the One Month Notice. I find that the tenant filed to dispute the One Month Notice on October 9, 2018, in accordance within the timelines set out in section 47 of the Act.

Residential Policy Guideline #8 states that where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof.

In this case, the landlord did not attend the hearing or provide evidence proving that the tenant breached a material term. I find that the landlord has not met the burden of proof to evict the tenant for breach of a material term; I therefore cancel the One Month Notice and find that it is of no force or effect.

Conclusion

~~Pursuant to section 55 of the Act, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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.~~

I find that the One Month Notice is of no force or effect and that this tenancy will continue in accordance with the Act.

I cancel the Order of Possession issued on November 16, 2018.

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 16, 2018

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **November 27, 2018**
AT THE PLACES INDICATED **BY UNDERLINING OR USING ~~STRIKETHROUGH~~**.

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

