



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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

DF attended with the tenant in this hearing, and provided testimony on behalf of the tenant. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's Application and evidence.

The landlord testified that the 1 Month Notice, dated September 29, 2018, was personally served to the tenant. The tenant indicated during the hearing that there was no issue with the service of the 1 Month Notice. Accordingly, I find that the 1 Month Notice was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord's Evidence

The landlord testified in the hearing that she had never served the tenant with her evidentiary materials.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. In this case, the landlord admits that the tenant was not served with the landlord's evidence package. On this basis, the landlord's evidentiary materials will be excluded for the purposes of this hearing.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on August 1, 2018. Monthly rent is set at \$1,000.00, payable on the first of the month. The tenant continues to reside at the rental unit.

The landlord issued the 1 Month Notice on the following grounds: "rental unit/site must be vacated to comply with a government order".

Both parties confirmed that the landlord had originally rented two suites for \$1,000.00 each, with the tenant residing in one of the units. The landlord was informed that the two rental units were in contravention of city bylaws, and had to restore both units to one rental unit. The other tenant moved out, leaving the tenant applicant as the sole remaining tenant now living in a large, 2 bedroom unit, paying the same monthly rent.

Both parties confirmed that the rental unit is no longer in contravention of any city bylaws, which is confirmed by the correspondence provided in the tenant's evidence. The landlord is seeking to end the tenancy on the grounds that she has lost one tenant

and therefore rental income, and due to insurance restrictions she is unable to allow the tenant to have a roommate to assist with increased rent payments.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed her application on October 9, 2018, ten days after receiving the 1 Month Notice. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority...

I have considered the concerns brought up by the landlord. I have also considered the testimony of the tenant and the evidentiary evidence provided for this hearing. Although I sympathize with the landlord that she has lost a rental unit, and therefore significant rental income, I find it undisputed by both parties that the rental unit now complies with city bylaws, and there is no government order that requires the tenant to vacate the rental unit.

I find that the landlord does not have sufficient grounds to end the tenancy pursuant to the reason provided on the 1 Month Notice, and accordingly, I allow the tenant's application to cancel the 1 Month Notice dated September 29, 2018. The 1 Month Notice is hereby cancelled and the tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated September 29, 2018, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

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 19, 2018

Residential Tenancy Branch