



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 by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 11, 2019.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenant testified that they received the Notice on October 3, 2019, with an effective vacancy date of October 31, 2019. As that date is earlier than the Act, allows that date automatically corrects to November 30, 2019. Filed in evidence is a copy of the Notice.

The tenant testified that they filed their application on October 15, 2019, as that was the earliest date they could file their application at the Service BC office to dispute the Notice.

The landlord's agent testified that the Notice was not disputed within the required time frame and they also issued a second notice to end tenancy that was not disputed. Filed in evidence is a copy of the notice to end tenancy.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

(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.

In this case, the tenant received the Notice on October 3, 2019. I find the tenant had until October 13, 2019, to dispute the Notice. As the last day the tenant had to dispute the Notice fell on a Sunday, a day the Residential Tenancy Branch was not open; that day automatically extends to October 14, 2019.

The tenant did not file their application until October 15, 2019, which is outside the legislated time limit, although I note, the tenant dated and signed their application on October 8, 2019.

I find the tenant did not comply with the legislated time limit and are presumed to have accepted that the tenancy ends on the corrected effective date of the Notice.

Further, the tenant has not provided any exceptional circumstance that prevented the tenant from filing their application on time, such as being hospitalized. Simply attend the Service BC office on the first date they were available, is not an exceptional circumstance. Therefore, I find the tenancy legally ends on November 30, 2019.

In addition, the tenant was served with a second notice to end tenancy. The tenant did not amend their application to dispute the second notice or make an application to dispute the Notice. The second notice to end tenancy also has an effective vacancy date of November 30, 2019

Therefore, I dismiss the tenant's application to cancel the Notice.
The tenancy will end on November 30, 2019 in accordance with the Act.

As the tenancy legally ended on the corrected effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. I find that the landlord is entitled to an order of possession effective **November 30, 2019, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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 25, 2019

Residential Tenancy Branch