



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RR, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice for Landlord's Use of Property, issued on November 1, 2020, as amended, for a monetary order for money loss or other money owed, and to have the landlord comply with the Act.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice. The balance of the tenant's application is dismissed, with leave to reapply.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The landlord testified that the tenant did not dispute the Notice within the statutory time limit. The landlord stated that the tenant's wife was served on November 1, 2019, when she came to the office to pay the rent, which was witnessed. The landlord stated that the tenant did not dispute the Notice unit after the effective date of the Notice. Filed in evidence is a copy of the Notice.

The landlord testified that they accidentally signed the wrong date of the Notice, as it was not issued on November 5, 2019, it was issued on November 1, 2019.

The landlord testified that they had such a good relationship with the tenants that she was informed at that time that they would give them three months of rent free. The landlord stated the tenants have not paid any rent for January, February, and March 2020.

The tenant testified that their wife did not receive the Notice on November 1, 2019, and it was not until February 28, 2020, when they received the Notice. The tenant confirmed rent for the above three months have not been paid.

The tenant testified that his wife's mother drove his wife to pay rent in November 2019 and would know if his wife was served with the Notice.

The landlord argued that the tenant's mother may have drove her to the office, but they were not in the office that day. The landlord stated that the tenant also received a second copy of December 1, 2019, when he attended the office.

Analysis

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

In this case, I accept the landlord's evidence that the date they issued the Notice was incorrect as the evidence was it was issued on November 1, 2020, not November 5, 2019. Therefore, I have corrected the issued date to November 1, 2020.

I find I must accept the evidence of the landlord that the tenant's wife was served on November 1, 2019, with a copy of the Notice. The landlord was present on November 1, 2019, at the time the Notice was served. The service of the document was witnessed by a staff member.

The tenant's wife did not attend the hearing to give evidence or to be cross-examined on the issue of service, which would have been reasonable since the tenant was denying his wife was served with the Notice in their application and had to have known this was an issue that I must be considered. The tenant was not present at the office on November 1, 2019.

Further, the tenant has not paid rent since January 2020, this leads me to believe the tenant was fully aware of this matter and the agreement made on November 1, 2019, not to pay rent for three months.

Based on the above, I find the tenant did not dispute the Notice within the statutory time limit. The tenant made their application on March 23, 2020 after the effective date of the Notice, which was February 28, 2020, I find I cannot consider if the tenant had an exceptional circumstance.

I find the Notice is valid and remains in full force and effect. Therefore, I find the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act, effective two (2) days after service upon the tenant. This Order may be enforced in the BC Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

Conclusion

The tenant's application to cancel the Notice is dismissed. 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: April 20, 2020