



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEREZAN HOSPITALITY GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:49 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord, represented by RB (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness SM also attended. 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 landlord, his witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed receipt of the Notice of Hearing about one month ago. The landlord affirmed he served the response evidence in person on September 12, 2021.

Based on the landlord's convincing testimony, I find the parties were served the notice of hearing and the response evidence in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) I order the tenant's application dismissed without leave to reapply.

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.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord affirmed the periodic tenancy started in September or October 2020. Monthly rent of \$1,000.00 is due on the first day of the month. The tenancy agreement is verbal.

The landlord stated the rental unit is a commercial property and should be occupied by the manager of the commercial property.

The landlord testified he served the Notice in person on May 11, 2021. A copy of the Notice was submitted into evidence:

According to our oral agreement for you to rent the top floor of the house and the carport area at [redacted for privacy] for 8 months during the resort off-season (October 2020–May 2021), this letter shall serve as your 30 day written notice that your tenancy will come to an end on June 15th, 2021.

You must vacate the premises on or before June 15, 2021 because we need the house to be available to run the resort for the summer.

Analysis

Section 52 of the Act states:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1)for a notice under section 45.1 [tenant's notice: family violence or long-term care],
be accompanied by a statement made in accordance with section 45.2 [confirmation of
eligibility], and
(e)when given by a landlord, be in the approved form.

Based on the copy of the Notice provided, I find the Notice does not comply with section 52(e) of the Act, as it is not in the form approved by the Residential Tenancy Branch. Thus, I cannot issue an order of possession.

As the tenant's application is dismissed, the tenant must bear the cost of the filing fee.

Conclusion

The Notice does not meet the requirements of section 52 of the Act and therefore I decline to issue an Order of Possession. This tenancy shall continue until it is 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: September 24, 2021

Residential Tenancy Branch