



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OPC FFL

Introduction

The landlord seeks an order of possession on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to sections 47 and 55 of the *Residential Tenancy Act* (the "Act"). The tenants seek an order cancelling the Notice, pursuant to sections 47 and 55 of the Act. The landlord also seeks to recover the cost of the filing fee under section 72.

A hearing was held on November 14, 2022 by teleconference and one of the tenants and two representatives for the landlord attended. The parties were affirmed, and no service issues were raised by the parties.

Preliminary Issue: Conclusive Presumption of the Notice

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching the following decision. Only relevant oral and documentary evidence needed to resolve this preliminary issue is reproduced.

The parties confirmed that the Notice, issued under section 47 of the Act, was served on the tenants by being posted on the door of the rental unit on May 11, 2022. This method of service is consistent and in compliance with section 88(g) of the Act.

The tenant testified that she contacted the landlord's representative (C.S.) on May 12 and had a conversation with the landlord about the Notice. They presumably spoke about the Notice and that it was issued due to numerous complaints about smoking in the rental unit. The tenant testified that she was under the impression that the landlord would "drop it" and continue to allow the tenant to remain in the rental unit. Therefore, the tenant chose not to dispute the Notice right away.

It was only after the tenants received further notices that she decided to eventually file an application for dispute resolution (to dispute the Notice) on June 27, 2022.

The landlord's representative testified that she did in fact have a conversation with the tenant on the date in question. They spoke about the smoking complaints, and of the warning letters that had been sent to the tenants. However, the landlord was adamant that she told the tenant that the landlord would not be cancelling the Notice. The landlord's representative also testified that "I didn't tell her she could stay."

In response to a question from me about any documentary proof of the landlord's intention to cancel the Notice, the tenant explained that she did not have anything in writing. But she reiterated that she was under the impression that the Notice had been "dropped" or cancelled. She was also, she added, confused about the circumstances.

The Notice was issued under section 47 of the Act and specifically under subsection 47(1)(h) of the Act, in this case due to repeated alleged breaches of the tenancy agreement's clause that prohibits smoking in the rental unit. A copy of the Notice was in evidence, and I find, having reviewed it in its entirety, that it was validly issued under section 47 of the Act and that it meets the form and content requirements set out in section 52 of the Act. Further, the Notice states on the first page at the top that a tenant who receives such a notice to end the tenancy has ten days to dispute the notice. This mirrors the ten-day dispute period set out in subsection 47(4) of the Act.

However, if a tenant does not make an application for dispute resolution to dispute the notice within 10 days after the date that the tenant receives the notice, then, as per section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice (in this case, June 30, 2022) and they must vacate the rental unit by that date.

Regarding the tenant's mistaken belief that the landlord was cancelling the Notice, there is no evidence before me to find that the landlord ever intended or said that there were going to cancel the Notice.

When two parties to a dispute provide equally plausible accounts of events related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenant has failed to provide any evidence beyond their testimony that the landlord ever indicated that they would cancel the Notice. In the circumstances, given the number of warnings sent to the tenant about the complaints of smoking, I find it highly improbable that the landlord would have rescinded the Notice. In short, I am not persuaded that the landlord cancelled the Notice, or that they told the tenant that this was the case.

For this reason, I find that the tenants conclusively presumed to have accepted the Notice and that the tenancy ended on June 30, 2022. And given these findings it is my conclusion that the tenants' application to dispute the Notice must be dismissed, without leave to reapply. The landlord's application is thus granted.

Pursuant to section 55(2)(b) of the Act the landlord is granted an order of possession of the rental unit. A copy of the order of possession is issued with this Decision to the landlord, and the landlord must serve a copy of the order of possession on the tenants.

The landlord is authorized, under section 38(4)(b) of the Act, to retain \$100.00 of the tenants' security deposit to pay for the cost of the landlord's application filing fee.

Conclusion

For the reasons given above the tenants' application is dismissed and the landlord's application is granted.

This decision is final and binding, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: November 15, 2022

Residential Tenancy Branch