



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CENTURY 21 QUEENSWOOD
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 29, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice).

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on February 13, 2023, and was attended by the Tenant and their Agent/Advocate, who is their mother. All testimony provided was affirmed. The Tenant and their Agent/Advocate were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing. As an agent for the corporate Landlord did not attend the hearing, I confirmed service of these documents as explained below. The Tenant testified that the Notice of Dispute Resolution Proceeding (NODRP) package, which

includes a copy of the Application and the Notice of Hearing, was sent to the Landlord by registered mail. A copy of the addressed registered mail slip, which contains a tracking number, was provided for my review. With the Tenant's consent, I logged into the Canada Post online tracking system which shows that the above noted registered mail package was sent on October 19, 2022, and delivered on October 21, 2022. I verified that the address for service for the Landlord listed in the One Month Notice matches the delivery address listed on the registered mail slip. Based on the above, I find that the Landlord was served on October 21, 2022. In any event, documentary evidence was also submitted to the Residential Tenancy Branch (Branch) on behalf of the Landlord, which further satisfied me that the Landlord was served with the NODRP.

Branch records show that the NODRP was made available for pick-up by the Tenant on October 18, 2022, to be given or served by October 21, 2022. As I am satisfied that the registered mail was sent to the Landlord on October 19, 2022, I am satisfied that the Tenant complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Tenant and their Agent/Advocate had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that 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 reapply. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Landlord or an agent acting on their behalf.

At the request of the Tenant, copies of the decision and any orders issued in their favor will be mailed to them at the rental unit address. Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the Act?

If the Tenant is unsuccessful in seeking to cancel the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy commenced on September 1, 2020, and could continue on a month-to-month (periodic) basis at the end of the fixed term on August 31, 2021.

The Tenant submitted a copy of the One Month Notice, which is signed and dated September 22, 2022, has an effective vacancy date of October 31, 2022, and gives the following reason for ending the tenancy:

- The Tenant or a person permitted on the residential property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Tenant testified that they received the One Month Notice off their door on September 22, 2022, and that it is their understanding that the Landlord is open to continuing the tenancy as they have approached them about doing maintenance on the property. Although the teleconference remained open for the 14-minute duration of the hearing, no one called in on behalf of the Landlord to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the Act applies exists between the parties. I am also satisfied that the Tenant was served with the One Month Notice on September 22, 2022, and that they disputed it on September 29, 2022, which is within the time limit for doing so set out in section 47(4) of the Act.

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the Act to issue the notice. As no one appeared at the hearing on behalf of the Landlord to provide any testimony for my consideration, or to present the evidence submitted to the Branch on behalf of the Landlord as required by rule 7.4 of the Rules of Procedure, I find that they have failed to establish, on a balance of probabilities, that they have cause to end the tenancy under the Act. As a result, I grant the Tenant's Application seeking cancellation of the One Month Notice and order that the tenancy continue in full force and effect until it is ended in accordance with the Act.

Conclusion

I grant the Tenant's Application and order that the One Month Notice dated on September 22, 2022, is cancelled. I also order that the tenancy continue in full force and effect until it is ended in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: February 13, 2023

Residential Tenancy Branch