



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

The Tenant seeks an order cancelling a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (the “Act”).

The Landlord, K.C., attended the hearing and provided authority for their Agent, G.L., to speak on their behalf. A witness for the Landlord, D.M. also attended the hearing but was not called to testify. The Tenant attended the hearing. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on January 18, 2023 in-person. The Landlord confirmed receipt of the Materials on January 19, 2023 at 9:30 P.M. Therefore, I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

G.L. testified that the Landlord’s evidence was served on the Tenant on April 5 in-person. The Tenant confirmed receipt of the Landlord’s evidence. I find that pursuant to sections 89 and 90 of the Act that Tenant’s Materials were sufficiently served to the Landlord.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Notice?
2. If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

Both parties agreed that the tenancy started on January 1, 2017 and that rent is \$781.00 per month due on the first day of the month. A security deposit of \$350.00 was paid by the Tenant which the Landlord still holds. A copy of the written tenancy agreement ("Tenancy Agreement") was entered into evidence by the Landlord. The Tenant still occupies the rental unit.

G.L. testified that they seek an Order of Possession as the Tenant has breached a material term of the Tenancy Agreement by disturbing the quiet enjoyment of other occupants of the building.

G.L. stated that on November 2, 2022 they issued a breach letter to the Tenant as there had been noise caused by the Tenant who was laughing and drinking into the late hours. As the building was built in 1952 and has no soundproofing, G.L. stated this level of noise was not acceptable.

The Notice was issued on December 19, 2022 by attaching to the door of the rental unit when noise caused by the Tenant continued after the breach letter was issued. The Notice was entered into evidence by the Landlord and is signed December 19, 2022 and provides an effective date of January 31, 2023.

The reasons for ending the tenancy given on the Notice are:

- that 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 of the residential property; and
- that the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Tenant testified that they understand they need to be quiet and that is what they have been doing. They stated they wanted to resolve the issue and for the relationship with the Landlord to work.

The Tenant confirmed they received the Notice on December 21, 2022 and submitted their Application disputing the Notice on January 12, 2023. The Tenant stated they were delayed in disputing the Notice due to bad weather. Snowfall in the area meant that buses and taxi cabs were not running.

Analysis

Section 47 of the Act permits a landlord to end a tenancy by issuing a Notice to End Tenancy for Cause in the approved form. Section 47(4) of the Act confirms that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice.

Section 47(5) states that if a tenant who has received a Notice to End Tenancy for Cause and does not make an application for dispute resolution within 10 days of receipt of the notice, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the Tenant's testimony, I find that the Notice was received by the Tenant on December 21, 2022. Therefore they had until December 31, 2022 to dispute the Notice.

The Tenant did not file their Application until January 12, 2023 which is twelve days after their deadline to dispute the Notice expired. The Tenant did not request additional time to file their Application under section 66 of the Act which states that a deadline established by the Act may be extended only in exceptional circumstances.

Notwithstanding the absence of a request for additional time to file their Application under section 66 of the Act, I do not find the reasons put forward by the Tenant for filing their Application late, namely weather-related issues, to be exceptional circumstances. Therefore, I can not grant an extension to the deadline for disputing the Notice to the Tenant. To do so would be overly prejudicial to the Landlord.

Therefore, in accordance with section 47(5) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2023. I also find that the Notice complies with the form and content requirements set out in section 52 of the Act.

As I find the Tenant is conclusively presumed to have accepted that the tenancy on the effective date of the Notice, I dismiss without leave to reapply the Tenant's Application to cancel the Notice.

I find the Landlord is entitled to an Order of Possession in accordance with section 55(1) of the Act. I find that the Tenancy ended on January 31, 2023 in accordance with the effective date of the Notice.

Conclusion

The Tenant's Application is dismissed.

The Landlord is issued an Order of Possession.

A copy of the Order of Possession is attached to this Decision. It is the Landlord's obligation to serve the Order of Possession on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and enforced as an order of that court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 20, 2023

Residential Tenancy Branch