



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 24, 2018. The Landlord sought the following: compensation for damage caused by the Tenant, their pets or guests to the unit; compensation for monetary loss or other money owed; an Order of Possession based on a One Month Notice to End Tenancy for Cause dated December 19, 2017 (the "One Month Notice"); and reimbursement for the filing fee.

The Representative of the Landlord appeared at the hearing. He had two witnesses appear at the hearing. I asked the witnesses to leave the room until required and the Representative advised they did so.

The Tenant appeared at the hearing. The Tenant provided the correct spelling of her last name and I amended the Application to reflect this. This is reflected in the style of cause.

I asked the Representative how the monetary claims were related to the request for an Order of Possession based on the One Month Notice. The monetary claim related to damage caused to previous units occupied by the Tenant and damage caused by the Tenant to her current unit. The monetary claim also included a request for an NSF fee and key replacement charge that related to the current tenancy. The Representative did not submit that the claim for damage caused to previous units occupied by the Tenant was related to the request for an Order of Possession. I told the Representative I would dismiss this aspect of the Application with leave to re-apply. The Representative did not take issue with this.

This hearing took two hours. Two hours into the hearing, I told the Representative we would not have time to deal with the monetary claims. I also told the Representative that the monetary claims were premature as the Tenant had until the end of the tenancy to repay the Landlord for the monetary loss. I told the Representative I would dismiss the monetary claims with leave to re-apply. The Representative did not take issue with this. The monetary claims are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

I reviewed the evidence submitted by both parties and each confirmed I had received all evidence submitted. I told the Tenant I had difficulty reading her handwritten submissions and advised her she would need to provide oral testimony regarding the contents of the written submissions. I explained the hearing process to the parties. The Representative did not have questions. The Tenant raised the issue of an adjournment which I addressed when reviewing service of the hearing package and evidence. Both parties provided affirmed testimony.

I addressed service of the hearing package and evidence. The Tenant said she received the hearing package and evidence on April 26, 2018 posted on her door. The Representative confirmed the hearing package was posted on the door April 26, 2018. The Representative confirmed he received the Tenant's evidence May 9, 2018 and that he had a chance to review it although it was difficult to read.

The Tenant requested an adjournment. The Tenant said the hearing was only 19 days from her receiving the hearing date. She said she attempted to get people to assist her including an MLA and a lawyer. She said she has evidence. She said she has not had enough time to prepare. She said she could not do anything to prepare for the hearing for the first week after she received the hearing package and evidence because she was sick. She indicated that she deals with mental and physical health issues. She said she contacted a lawyer right after she got the hearing package. She said there were lawyers or legal advocates willing to assist her but there was not enough time between receiving the hearing package and evidence and the hearing. The Tenant made further submissions regarding this issue which were difficult to follow. I confirmed with the Tenant that the adjournment request was based on her submission that she did not have enough time to prepare for the hearing.

I found no issue with how the hearing package and evidence was served on the Tenant given the Tenant said she received both. I accepted the evidence of both parties that

the hearing package and evidence was served on the Tenant, and received by the Tenant, two days after the Application was filed. I found the Tenant had three weeks to prepare for the hearing. I found the Landlord complied with section 59(3) of the *Act* which requires an applicant to serve the application on the respondent within three days of filing it. Further, I found the Landlord complied with rule 3.1 of the Rules of Procedure (the “Rules”) which requires an applicant to serve the hearing package and their evidence on the respondent within three days of the hearing package being made available by the Residential Tenancy Branch (the “Branch”).

I considered the criteria for granting an adjournment under rule 7.9 of the Rules. I considered the submissions of the Tenant. I did not see how an adjournment would result in a resolution of the matter based on the Tenant’s submissions. I did not consider the request for an adjournment to be the result of intentional actions or neglect by the Tenant although I note that I do not consider minor illness to be a sufficient reason to delay preparing for a hearing. Ultimately, it was my view the Tenant had sufficient time to prepare for the hearing. I was not satisfied an adjournment was required to provide the Tenant a fair opportunity to be heard. Nor was I satisfied the Tenant would be prejudiced by proceeding. Further, it was my view the Landlord would be prejudiced by adjourning the application for an Order of Possession based on the undisputed One Month Notice. I denied the request for an adjournment and proceeded with the hearing.

Both parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony and reviewed all evidence submitted. I will only refer to the evidence I find relevant in this decision.

I note that the Tenant exited the conference call from 2:56 p.m. to 3:02 p.m. I continued in her absence given it is expected parties will be available and using a working telephone throughout the conference call.

Issues

1. Should the Landlord be granted an Order of Possession based on the One Month Notice?

Background and Evidence

The Landlord submitted a written tenancy agreement. The tenancy agreement is between the Landlord and Tenant regarding the rental unit. The tenancy started December 1, 2016. The agreement was for a fixed term ending May 30, 2016. The agreement was signed on behalf of the Landlord and by the Tenant November 24, 2016.

The Tenant said the agreement submitted is a false document and the agreement does not have an end date. She said there was a dispute resolution hearing previously about this. The Representative said the person who completed the agreement did not include an end date on the Tenant's copy. He said there was a previous hearing where it was determined this is a month-to-month tenancy. He provided the file number for the hearing which is listed on the front page of this decision as "File Number 1". The Tenant agreed with the Representative about the outcome of the previous hearing. Both parties agreed the previous hearing was not otherwise relevant to this hearing. The Tenant agreed with the remaining aspects of the tenancy agreement as outlined above. Both parties agreed rent is due on the first of each month.

I have not looked at the decision from the previous hearing given the parties agree the decision was that the tenancy is a month-to-month tenancy and given the parties did not point to any further relevance of this decision.

The One Month Notice is signed and dated by the Representative. It is in the approved form. It gives the address of the rental unit. It states the effective date as January 31, 2018. It states the grounds for the notice as the "tenant or a person permitted on the property by the tenant has...seriously jeopardized the health or safety or lawful right of another occupant or the landlord" and "put the landlord's property at significant risk". Further, it states that the Tenant has breached a material term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice to do so was provided. The Tenant did not raise any issue in relation to the contents of the One Month Notice.

The Representative had two witnesses testify about service of the One Month Notice on the Tenant. The first witness, T.W., provided affirmed testimony. He said he went with witness P.S., the building manager, to post the One Month Notice on the rental unit. He said P.S. posted both pages of the One Month Notice. He confirmed he signed the

witness statement on the Proof of Service submitted by the Landlord. I asked T.W. some details about the One Month Notice which he did not know. I asked T.W. how he knew it was the One Month Notice that P.S. posted on the door and he had no answer for this. Neither the Representative nor the Tenant had questions for T.W.

The second witness, P.S., provided affirmed testimony. He said he posted the One Month Notice on the door of the rental unit. He said he took a picture of this which is exhibit AB in the submissions of the Landlord. He said he read the One Month Notice and knows it was a One Month Notice to evict the Tenant. He said he completed the Proof of Service submitted by the Landlord. Neither the Representative nor the Tenant had questions for P.S.

I have reviewed the photo which is part of exhibit AB in the Landlord's submissions. It shows two pages taped to a door that indicates the unit number of the Tenant. I cannot tell from the photo what the two pages are.

I have reviewed the Proof of Service submitted by the Landlord. It states the One Month Notice was served on the Tenant on December 19, 2017 by attaching a copy on the door or other conspicuous place of the rental unit. The witness statement section is completed and signed by T.W. The Proof of Service is signed by P.S.

The Tenant said she did not know whether she received the One Month Notice. She then said there had been a dispute resolution hearing about the One Month Notice on March 13, 2018. She provided the file number for this hearing which is indicated on the front page of this decision as "File Number 2". With the permission of the parties, I looked at the decision from this previous hearing. The dispute was between the same parties as in this hearing and related to the same rental unit. The Tenant appeared at the hearing with an advocate. Nobody appeared at the hearing for the Landlord. The hearing was in response to an application by the Tenant to cancel a One Month Notice for Cause among other issues. The Arbitrator at the hearing was not satisfied the Landlord was properly served with the application and therefore dismissed the Tenant's application with leave to re-apply.

The Tenant confirmed the hearing on March 13, 2018 related to the One Month Notice before me in this hearing. The Tenant said she did not re-apply to cancel the One Month Notice after the previous hearing. She said she did not file any other dispute in relation to the One Month Notice.

I pointed out to the Tenant that she must have received the One Month Notice given she disputed it. She agreed with this. She said she did not know when she received the One Month Notice. After hearing from the witnesses, the Tenant then said she got the One Month Notice a few days after it was posted on her door.

During the hearing, I told the parties I would not obtain evidence from either regarding the grounds for the One Month Notice as the One Month Notice was effectively undisputed by the Tenant and therefore the Tenant was conclusively presumed to have accepted the One Month Notice pursuant to section 47(5) of the *Act*. The Tenant became emotional after being advised of this. She asked if she could appeal the decision. I told her she could seek a review of the decision and told her to call the Branch immediately and speak to an Information Officer about her options given there are time limits involved.

The Representative said the Tenant has paid rent since the One Month Notice was issued in December. He pointed to letters submitted as evidence in relation to rent being for use and occupancy only. The Tenant said she understood the Landlord still wanted her to vacate the rental unit based on the One Month Notice up until the date of this hearing and said the Landlord had tried to evict her 30 times.

Analysis

I accept the testimony of P.S. that he posted the One Month Notice on the door of the rental unit. Based on the Proof of Service signed by P.S., I accept P.S. did this December 19, 2017. I find the testimony of T.W. mostly unhelpful given he could not say it was the One Month Notice he observed P.S. post on the rental unit door; however, I accept his testimony that he observed P.S. post something on the rental unit door and I find this lends some support to the testimony of P.S. Based on the witness statement in the Proof of Service signed by T.W., I find he witnessed P.S. do this on December 19, 2017. Based on the testimony of the Tenant that she disputed the One Month Notice which resulted in the hearing on March 13, 2018, I find the Tenant must have received the One Month Notice as she could not have disputed a One Month Notice she never received.

I find the One Month Notice was served on the Tenant in accordance with section 88(g) of the *Act*. Given the absence of clear evidence on when the Tenant received the One Month Notice, it is deemed received three days after it was posted to the door of the rental unit pursuant to section 90(c) of the *Act*. Therefore, I find the One Month Notice was received by the Tenant December 22, 2017.

Pursuant to section 47(4) of the *Act*, the Tenant had 10 days to dispute the One Month Notice. I cannot tell from the decision from the previous hearing regarding File Number 2 when the Tenant disputed the One Month Notice. The Tenant did not provide clear evidence on this point. However, I find this information unnecessary for my decision. The Tenant's application to dispute the One Month Notice was dismissed with leave to re-apply based on a service issue. This effectively means the Tenant has not disputed the One Month Notice. The Tenant said she did not file any other dispute of the One Month Notice. I note that the Tenant would have been out of time to dispute the One Month Notice after her application was dismissed in any event. In the circumstances, I find the Tenant has not disputed the One Month Notice under section 47(4) of the *Act*. Based on a review of the One Month Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Given my finding above that the Tenant has not disputed the One Month Notice in accordance with section 47(4) of the *Act*, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted the One Month Notice and the Tenant must vacate the rental unit. I note that it is not necessary for me to determine whether the Landlord in fact had grounds to issue the One Month Notice in these circumstances.

I find the effective date on the One Month Notice complies with section 47(2) of the *Act*. Therefore, the tenancy ended January 31, 2018 and the Landlord is entitled to an Order of Possession. The Representative agreed the Order could be effective May 31, 2018. I grant the Landlord an Order of Possession effective May 31, 2018 pursuant to section 55 of the *Act*.

Given the Landlord was successful in this application, I award the Landlord reimbursement for the filing fee pursuant to section 72(1) of the *Act*. The Representative said the Landlord does not hold a security deposit or pet damage deposit from the Tenant. Therefore, I grant the Landlord a Monetary Order in the amount of \$100.00.

Conclusion

The Landlord is granted an Order of Possession effective at 1:00 p.m. on May 31, 2018. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is granted a Monetary Order in the amount of \$100.00. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

The monetary claims are dismissed with leave to re-apply. This does not extend any time limits under 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 *Act*.

Dated: May 25, 2018

Residential Tenancy Branch