



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMMUNITY BUILDERS GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, CNC, OLC, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause, pursuant to section 47.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. Two of the landlord's representatives attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 landlords and I were the only ones who had called into this teleconference.

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* or the notice is upheld.

Preliminary Issue- Tenant's Application

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 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 re-apply.

Based on the above, **in the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession, pursuant to section 55 of the Act?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's representatives, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's building supervisor (the "landlord") provided undisputed evidence that this tenancy began on September 7, 2017 and is currently ongoing. Monthly rent in the amount of \$475.00 is payable on the first day of each month. A security deposit of \$237.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on June 28, 2018 he posted a One Month Notice to End Tenancy for Cause with an effective date of July 31, 2018 (the "One Month Notice") on the tenant's door. The landlord entered into evidence a witnessed proof of service form indicating that the landlord posted the One Month Notice on the tenant's door on June 28, 2018. The One Month Notice was entered into evidence.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The landlord testified that the tenant was advised when she moved in that her rental rate was based on single occupation of the suite. The landlord testified that despite the tenant's awareness of this stipulation her boyfriend has resided in the rental suite since she moved in, in September 2017.

The landlord testified that the tenant's boyfriend was provided with a document called "intending to rent" on March 1, 2018 and May 1, 2018. The landlord testified that the tenant's boyfriend failed to sign these documents, which would have allowed him to stay in the rental unit with the tenant but would charge him extra rent.

The landlord entered into evidence four incident reports sent the tenant on the following dates: June 8, 2018, June 12, 2018, June 18, 2018, and June 25, 2018. All four letters stated that the tenant's rental suite was single occupancy only and that by continuing to allow her boyfriend to live at her rental suite, she was putting her tenancy at risk.

The landlord testified that the extra occupant increased electrical and waste removal costs and that the tenant's boyfriend frequently partook in the free breakfast program that is intended for tenants only.

The landlord testified that the tenant has caused extraordinary damage by damaging the sink in her suite. The landlord entered into evidence four maintenance requests sent to the tenant on the following dates: April 30, 2018, May 21, 2018, February 13, 2018, and June 4, 2018. All of the requests stated that the sink in the tenant's suite is cracked and leaking. The requests further state that the maintenance personnel are unable to access the sink to properly assess the damage because the tenant has made the sink inaccessible due to large amounts of clutter. The maintenance requests ask the tenant to clean up her suite so that repairs can be made.

The landlord testified that the tenant has not yet cleaned up her suite and so the damages have not yet been assessed. The landlord testified that below the tenant's unit is a business and that water from her unit has leaked into the business.

The landlord testified that the tenant has not maintained reasonable health, cleanliness and sanitary standards in her suite. The landlord testified that in addition to the water leaking issues that the tenant's suite is infested with cockroaches and mice and that the tenant has refused to clean up her suite so that pest control can take measures to

eradicate the pests. The landlord testified that the infestation in the tenant's suite is affecting her neighbours.

Analysis

Based on the testimony of the landlord and the proof of service document entered into evidence, I find that the landlord posted the One Month Notice on the tenant's door on June 28, 2018, pursuant to section 88 of the *Act*. Pursuant to section 90 of the *Act*, I find that the tenant was deemed served with the One Month Notice on July 1, 2018, three days after its posting.

Section 53(2) of the *Act* states that if the effective date stated in the notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. In this case, the earliest date that complies with section 47 of the *Act* is August 31, 2018.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the landlord's One Month Notice, I find that it complies with section 52 of the *Act*. As stated earlier in this decision, I find that the tenant's application is dismissed without leave to reapply. Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a two-day Order of Possession.

Since I have found that the landlord is entitled to a two-day Order of Possession, pursuant to section 55, I decline to consider the merits of the One Month Notice.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with

this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 06, 2018

Residential Tenancy Branch