



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order of Possession from a One Month Notice to End Tenancy for Cause.

The Landlord’s Agent and Property Manager appeared for the scheduled hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenant to call into this teleconference hearing scheduled for 11:10 a.m.

The Landlord attended the hearing and was 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 Landlord and I were the only ones who had called into this teleconference.

The Landlord confirmed that the Notice of Hearing was served by registered mail and the Tenant’s signature confirms delivery was made on August 30, 2018. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Background and Evidence

This tenancy began November 22, 2017 with monthly rent of \$375.00, payable on the first of each month. A security deposit of \$187.50 was paid to the Landlord. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord submitted videos, written log entries and witness statements which document several incidents committed by the Tenant on staff and other residents. The evidence indicates that the Tenant has uttered threats to others, assaulted a resident, entered another resident's suite without permission and used harmful substances in common areas. The Tenant's smoke detection system was also tampered with.

Particulars of incidents which led to the service of a One Month Notice to End Tenancy on June 26, 2018 on the Tenant (with an effective date of July 31, 2018) include the following:

- June 10, 2018 Tenant assaulted the front desk staff by shoving him; letter from staff witnessing was submitted;
- June 24, 2018 Tenant unlawfully entered his neighboring suite and stole something;
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Subsequent events reported include the following:

- July 8, 2018 Tenant violently assaulted another tenant unprovoked, video of the incident was submitted;
- July 8, 2018 the Tenant's support worker logged an on-going complaint how Tenant contributes to an unsafe working environment by leaving uncapped needles in common spaces and ignoring requests not to use drugs in common spaces;
- August 19, 2018/August 20, 2018 the fire alarm panel indicated an issue with the Tenant's smoke detector, where it was found that the smoke detector head was damaged and that a substance such as shaving cream was placed inside;
- Staff report feeling unsafe and have concerns about working with the Tenant and the Landlord has concerns about safety of both residents and staff at the building.

The Notice to End Tenancy for Cause was served by posting it on the Tenant's door on June 26, 2018; a Proof of Service form was submitted into evidence. The reasons given for the eviction were stated in the notice as:

- Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant put the landlord's property at significant risk;

- Tenant has engaged in illegal activity that has or is likely to jeopardize the lawful right or interest of another occupant or the landlord;

The Tenant did not leave the rental unit on the effective date of the notice and did not file a dispute application within the ten-day limitation period.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a 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.

The Tenant did not call into the conference call by 11:10 a.m., and I find that the Landlord served the Notice of Hearing by registered mail in accordance with section 89 of the Act; I am satisfied that service was effected on April 30, 2018 and I conducted the hearing in the Tenant's absence.

Under section 47 of the Act, a landlord may end a tenancy with one month's notice for certain stated reasons:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:...*

(d) the tenant or a person permitted on the residential property by the tenant has

*(i) **significantly interfered with or unreasonably disturbed** another occupant or the landlord of the residential property,*

*(ii) **seriously jeopardized the health or safety** or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at **significant risk**;*

*(e) the tenant or a person permitted on the residential property by the tenant has engaged in **illegal activity** that*

(i) has caused or is likely to cause damage to the landlord's property,

(ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
(iii) *has jeopardized or is likely to **jeopardize a lawful right or interest of another occupant** or the landlord;...*

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(4) *A **tenant may dispute a notice** under this section by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.*

(5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

(a) *is **conclusively presumed to have accepted** that the tenancy ends on the effective date of the notice, and*

(b) *must vacate the rental unit by that date. [bolding added]*

Based on undisputed testimony of the Landlord, I find that the Tenant was served with the Notice to End Tenancy as of June 29, 2018, and I find that the One Month Notice does comply with the form and content provisions of section 52 of the *Act.*, which states that the Notice must be in writing and must:

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

Section 47(4) of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the Tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the Tenant is *conclusively presumed* under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One Month Notice, July 31, 2018. Accordingly, the Landlord is granted an Order of Possession.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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: October 17, 2018

Residential Tenancy Branch