



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPM

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 11, 2018 wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on July 17, 2018 (the "Notice") and a Mutual Agreement to End Tenancy signed by the Tenant on August 28, 2018.

The hearing was scheduled for 9:30 a.m. on November 23, 2018.

Only the Landlord's Agent, D.M., called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:52 a.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlord's hearing package. D.M. testified that he served the Tenant with the Notice of Hearing and the Application on October 16, 2018 by registered mail. He further testified that he then sent the evidence package to the Tenant by registered mail on October 29, 2018. A copy of the registered mail tracking numbers for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served with notice of the hearing as of October 21, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement confirming that this tenancy began April 1, 2015.

D.M. testified that on July 14, 2018 the Tenant kicked in the locked door of another tenant's suite, entered their unit and stole money from the other tenant.

As a result of the July 14, 2018 incident, the Landlord issued the Notice. The Landlord's Agent confirmed that the Notice was posted to the rental unit door on July 17, 2018. A Proof of Service was also provided in evidence.

The reasons cited on the Notice were as follows:

- 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,

- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has caused extraordinary damage to a rental unit or residential property;

D.M. confirmed that the Tenant failed to apply to dispute the Notice.

Documentary evidence submitted by the Landlord indicates that following the issuance of the Notice the parties discussed a mutual agreement to end the tenancy. On August 28, 2018 both parties signed a Mutual Agreement to End Tenancy providing that this tenancy would end on October 1, 2018.

D.M. testified that despite agreeing to move out, the Tenant continues to reside in the rental unit. D.M. further stated that the Tenant failed to pay rent for October and November 2018.

Analysis

After consideration of the Landlord's undisputed testimony, evidence and submissions and on a balance of probabilities, I find as follows.

A residential tenancy may only be ended in accordance with the *Residential Tenancy Act*; the ways a tenancy may end is set out in section 44 of the *Act* which provides as follows:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];**
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c) the landlord and tenant agree in writing to end the tenancy;**
 - (d) the tenant vacates or abandons the rental unit;

- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

[Emphasis added in bold]

The Landlord seeks an Order of Possession pursuant to section 44(1)(a)(iii): Cause, and section 44(1)(c): Mutual Agreement to End Tenancy.

Section 47 of the *Residential Tenancy Act* allows a Landlord to end a tenancy for cause by issuing a 1 Month Notice to End Tenancy for Cause.

I accept the Landlord's evidence that the 1 Month Notice was served on the Tenant by posting to the rental unit door on July 17, 2018. Section 90 of the *Act* provides that documents served in this way are deemed served three days later; consequently, I find the Tenant was served the Notice as of July 20, 2018.

The Notice informed the Tenant that they had ten days in which to make an application for dispute resolution, failing which they would be conclusively presumed to accept the end of the tenancy and would need to vacate the rental unit. This is based on the strict wording of sections 47(4) and (5) which read as follows:

(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.

I accept the Landlord's evidence that the Tenant failed to dispute the Notice. As such, the Tenant is conclusively presumed to accept the end of the tenancy and must vacate the rental unit.

I also accept the Landlord's undisputed evidence that a Mutual Agreement to End Tenancy was signed by the Landlord and the Tenant. Pursuant to this agreement, the Tenant agreed to vacate the rental unit on October 1, 2018.

For these reasons I grant the Landlord's request for an Order of Possession. This Order will be effective two days after service on the Tenant. The Landlord must serve the Tenant with a copy of the Order and may, if necessary, file and enforce the Order in the B.C. Supreme Court.

The Tenant is reminded that any costs associated with enforcing the Order, such as costs to file in the B.C. Supreme Court, or hire the services of a bailiff, may be recoverable from the Tenant.

Conclusion

The Landlord's application for an Order of Possession is granted.

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: November 23, 2018

Residential Tenancy Branch