



Dispute Resolution Services

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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 hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:46 a.m. in order to enable them or their representatives to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

At the hearing, Landlord LB testified that Tenant KM passed away in the hospital the day before this hearing. The landlord testified that the landlord was still proceeding with this application for dispute resolution as Tenant DT continues to reside in the rental unit.

The landlord gave undisputed sworn testimony that they handed the 1 Month Notice to the tenant(s) on October 18, 2018. I find that the tenant s were duly served with this Notice in accordance with section 88 of the *Act*.

The landlord testified that they handed Tenant KM a copy of the landlord's dispute resolution hearing package on November 8, 2018. While the landlord testified that they handed Tenant DT a copy of the landlord's dispute resolution hearing package about a week a week or two after serving this package to Tenant KM, the landlord was not certain of the date when this happened. Under these circumstances, I find that Tenant KM was duly served with this package in accordance with section 89(2) of the *Act*. As

the landlord did not have sufficient details regarding the service of the dispute resolution hearing package to Tenant DT, I find that the landlord has not proven service of this package to Tenant DT pursuant to section 89(2) of the *Act*, and, as such, I dismiss the landlord's application identifying Tenant DT as the Respondent, with leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice?

Background and Evidence

Tenant KM commenced residing in this rental unit on or about September 2016. At some point, Tenant DT moved into the rental unit with Tenant KM. Monthly rent is due on the first of each month. The landlord testified that payment of rent for this rental unit is forwarded to the landlord directly by the Ministry of Social Development and Poverty Reduction (the Ministry). As a payment has been received from the Ministry for December 2018, the landlord accepted that this tenancy may continue until December 31, 2018, the date when the Ministry's payment for the tenants' use and occupancy of this rental unit expires.

The landlord entered into written evidence a copy of the 1 Month Notice of October 18, 2018, in which the landlord was seeking an end to this tenancy by November 30, 2018 for the following reasons:

Tenant has allowed an unreasonable number of occupants in the unit/site

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;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

There is no record of the tenants having applied to cancel the landlord's 1 Month Notice, nor is the landlord aware of any such application.

Analysis

Section 47 of the *Act* reads in part as follows:

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:...*

(c) there are an unreasonable number of occupants in a rental unit;

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

(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;...

Section 47 of the *Act* also provides that upon receipt of a notice to end tenancy for cause the tenant(s) may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, November 30, 2018.

Section 47(3) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

Based on undisputed testimony of the landlord, I find that the tenants were served with the 1 Month Notice, and I find that the 1 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.

Under these circumstances, I allow the landlord's application to end this tenancy for cause and issue an Order of Possession in the landlord's favour. Since the landlord has accepted a payment from the Ministry for the month of December, the Order of Possession takes effect by 1:00 p.m. on December 31, 2018.

As noted above, I have dismissed the landlord's application identifying Tenant DT as a Respondent as I am not satisfied that the landlord has demonstrated service of the dispute resolution hearing package to Tenant DT. I emphasize that my dismissal of this portion of the landlord's application with leave to reapply has no bearing on the landlord's entitlement to an Order of Possession for this rental unit, since one of the tenants was properly served with the dispute resolution hearing package and the tenants are conclusively presumed to have accepted the landlord's 1 Month Notice by failing to apply to cancel it.

Conclusion

I allow the landlord's application for dispute resolution naming Tenant KM as the Respondent.

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on December 31, 2018. Should the tenants named on the tenancy agreement and all other occupants or tenants 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: December 11, 2018

Residential Tenancy Branch