



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC ERP PSF RP**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make regular repairs to the rental unit pursuant to section 32; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

I note that Section 55 of the *Residential Tenancy Act* (Act) requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy, I must consider if the landlord is entitled to an order of possession, if the Application will be dismissed and if the landlord has issued a notice to end tenancy that is compliant with the Act.

Rule 6.2 of The Residential Tenancy Act Rules of Procedure allow an arbitrator to decline to hear or dismiss unrelated issues if the arbitrator determines the issues are unrelated. I have determined that the tenant's application to make repairs, emergency repairs and to provide services are unrelated to the cancelling of the Notice and I dismiss these portions of the application. If the tenant is successful in cancelling the Notice, leave would be granted to reapply for this relief.

The landlord appeared for the scheduled hearing represented by CF ("landlord"). The landlord confirmed they received the tenants' notice of hearing package just before

December 25, 2018. Based on this evidence, I find the landlord was served with the notice of hearing package in accordance with sections 89 and 90 of the *Act*.

Both the tenants were represented at the hearing by the tenant, RV ("tenant"). Both the landlord and tenant confirmed the exchange of evidence. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is referenced in this decision.

The hearing process was explained, and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be cancelled?
Should the tenant be unsuccessful in cancelling the Notice to End Tenancy is the landlord entitled to an Order of Possession, pursuant to Section 55 of the Act?

Background and Evidence

The landlord provided a copy of the tenancy agreement which shows the tenancy started as a fixed one-year tenancy commencing November 1, 2016 with a monthly rent of \$780.00 with an additional charge of \$20.00 per month for laundry. I note that the tenancy agreement names the tenant HV and another tenant not named in this application, MV. MV did appear as a witness in these proceedings. A security deposit in the amount of \$390.00 was exchanged and the landlord continues to hold it. At the expiration of the one-year term, the tenancy became month to month and the rent at the time of this hearing is \$835.00 per month.

The landlord testified that they have been receiving multiple complaints from the other tenants in the building. The landlord provided letters from the other tenants describing smoking, arguing and yelling coming from the tenants' suite. In response, the landlord has sent warning letters to the tenant on March 23, 2018, August 24, 2018 and August 28, 2018.

They served the One Month Notice to End Tenancy for Cause ("Notice") by posting it to the door of the tenant's rental unit on November 13, 2018. The Notice is dated

November 13, 2018 and indicates that the tenant must move out of the rental unit by December 31, 2018 (the effective date). The reason for ending the tenancy identified on the Notice was that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. A witnessed proof of service document and a dated photograph of the Notice on the tenant's door was filed as evidence. The landlord's witness testified that on or about November 30, 2018 before going to the tenant's rental unit to return a cheque, her office manager advised her that it would be a good idea to give the tenant another copy of the Notice which she did on that date.

The tenant testified that they did not receive the Notice posted to the door on November 13, 2018, however the testifying tenant was not actually there on November 13, 2018. She does not recall specifically who was home on that day. The tenant only acknowledges the copy that was given to her on November 30, 2018.

Analysis

While the landlord provided sound evidence that the Notice was posted to the door on November 13, 2018, the tenant did not have any evidence to disprove the landlord's assertion.

Section 90(c) of the *Act* determines that when documents are served by posting to the door, they are deemed to be received on the third (3rd) day after it is attached. Without any evidence to contradict this, I find that on a balance of probabilities, it is more probable than not to believe that the Notice was posted to the door on November 13, 2018. I find the landlord's account of posting the Notice to be credible, and I therefore deem served on November 16, 2018, three days after posting to the door in accordance with sections 88 and 90 of the *Act*.

Sections 47(3)(4) and (5) of the *Act* state:

(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.** **(emphasis added)**

(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 have examined the Notice filed by the landlord and find that it complies 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.

As the tenant was deemed to be served with the Notice on November 16, 2018, the tenant's opportunity to file for dispute resolution ended on November 26, 2018. Since the application was filed on December 10, 2018, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice, or December 31, 2018. As the effective date of the Notice has passed, the landlord is entitled to an Order of Possession, effective two days after service upon the tenant.

As the tenancy has ended, the tenant's application for the landlord to perform repairs and emergency repairs is dismissed.

For the same reasons, the tenant's application for the landlord to provide services or facilities is also dismissed.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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: February 1, 2019

Residential Tenancy Branch