



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC LRE OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord’s materials. Neither party raised issues of service. I find the tenant served the landlord in accordance with section 89 of the *Act*.

I informed the parties that in the event I dismissed the tenant’s application to cancel the Two Month Notice issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) 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.

Preliminary Issue

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The tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the claims on the Tenants' application except for the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47.

Issue(s) to be Decided

Is the tenant entitled to the following:

- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47.

Is the landlord entitled to an order of possession pursuant to section 55.

Background and Evidence

During the hearing, the tenant was warned not to yell or raise his voice, failing which, the Arbitrator would take steps to limit his participation in the hearing. No such steps were taken.

The parties agreed that the month-to-month tenancy between the parties started on June 15, 2015 and is ongoing. Rent is \$944.11 a month payable on the first of the month. At the beginning of the tenancy, the tenant paid a security deposit of \$490 .00 which the landlord holds. The landlord issued the One Month Notice dated April 24, 2019 and served the Notice upon the tenant on that day by posting to the tenant's door, thereby effecting service three days later, that is, on April 27, 2019, pursuant to section 90; the Notice required the tenant to vacate on May 31, 2019. The Notice provided the following as cause for the issuance under section 47(1)(d):

- The tenant or person permitted on the residential property by the tenant has
 - `seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

A copy of the One Month Notice was submitted as evidence. The Notice provides that the tenant may dispute the Notice within ten days by filing an Application for Dispute Resolution and if the tenant did not, the tenant is presumed to accept the Notice and must move out by the effective date. The tenant filed an Application for Dispute Resolution on May 7, 2019, within 10 days.

The landlord testified there have been multiple complaints regarding noise from the unit such as yelling and arguing, as well as alleged assaults on several occasions by the tenant upon other occupants resulting in police being called and two occupants of other apartments vacating the building because of the tenant's actions.

The landlord stated they have issued several warning letters to the tenant, the most recent being November 6, 2018. The landlord stated that the tenant usually responded to the warnings by giving notice he was vacating, only to subsequently remain in the unit.

The landlord testified that on March 4, 2019 an altercation occurred between the tenant and the occupant of another apartment in the building resulting in the tenant being charged with assault with a weapon. The landlord submitted a copy of a confirming letter from a Probation Office stated that the tenant was placed on an Undertaking to

have no contact with the alleged victim and requesting the landlord to contact the police is there is a violation of the Undertaking of if the landlord is concerned about safety; a copy of the Undertaking signed by the tenant was also submitted as evidence stating the tenant was charged under the Criminal Code with assault with a weapon.

The tenant denied he had perpetrated any assaults; he stated he was the victim. The tenant denied he had been charged with any offence. He acknowledged that, "I have had a few noisy days"; however, the tenant stated that he has done "very little wrong", he is a "sick man" and he cannot find another place to live.

The landlord requested an order of possession effective on two days notice.

The tenant requested that the One Month Notice be cancelled.

Analysis

Based on the parties' uncontradicted testimony and a review of the One Month Notice, I find the Notice complied with section 52 of the *Act*.

I find that the landlord has met the burden of proof on a balance of probabilities that the tenant had seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. In reaching this conclusion, I have considered the testimony of the landlord and the submitted documents indicating the tenant has engaged in disruptive, noisy, argumentative behaviour causing other tenants to leave and resulting in the tenant charged with a serious offence in an assault against another tenant for which criminal proceedings are pending.

I acknowledge the tenant disputed the landlord's evidence, but I do not find the tenant's evidence credible and I prefer the evidence of the landlord in all material respects.

I therefore dismiss the tenant's application to cancel the One Month Notice and I uphold the Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must** grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(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.

Based on my decision to dismiss the tenant's application for dispute resolution and my finding that the landlord's One Month Notice complies with the *Act*, I find that this tenancy ended on the effective date in the Notice of May 31, 2019.

As the tenant is still in occupation of the unit, the landlord is therefore entitled to an order of possession effective two days after service.

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 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: June 17, 2019

Residential Tenancy Branch