



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 31, 2019 ("1 Month Notice"), pursuant to section 47.

The applicant tenant did not attend this hearing, which lasted approximately 17 minutes. The respondent landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the rental unit and that she had permission to represent the owner of the rental unit, at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The landlord testified that she personally served the tenant with the landlord's written evidence package on September 12, 2019. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's written evidence package on September 12, 2019.

The landlord confirmed that the tenant was personally served with the landlord's 1 Month Notice on July 31, 2019. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on July 31, 2019. The tenant indicated in his application that he personally received the 1 Month Notice on July 31, 2019.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the 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.

In the absence of any appearance by the tenant, I order the tenant's application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on March 1, 2011. Monthly rent in the current amount of \$554.88 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

The landlord's 1 Month Notice indicates an effective move-out date of August 31, 2019. A copy of the notice was provided for this hearing. The landlord issued the notice for the following reasons:

- *Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*
 - *damage the landlord's property;*
 - *jeopardize a lawful right or interest of another occupant or the landlord;*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;*

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord seeks an order of possession based on the 1 Month Notice. The landlord provided photographs to support her claims. The landlord said that she does not have proof that the tenant engaged in illegal activity.

The landlord stated that the tenant caused extraordinary damage to the rental unit. She claimed that the tenant caused plumbing damage, resulting in an expensive repair. She explained that the tenant tore up the flooring and carpet inside the rental unit, threw out the kitchen cabinets in the rental unit, and tore up the garden beds in the courtyard, all without the landlord's approval. She maintained that the tenant went on to the roof, when tenants are not allowed access on the roof. The landlord testified that the tenant played loud music that disturbed the neighbours and made construction noises. She said that the rental unit is a case of hoarding where the tenant has his belongings all over the floors, so that the walkways are not clear, which is a fire hazard. She stated that she saw the state of the rental unit as recently as September 12 and 24, 2019. She maintained that the tenant has acted aggressively towards her, so she requires a handyman to accompany her to the rental unit when she attends there.

Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant receives the notice. The tenant received the 1 Month Notice on July 31, 2019 and filed his application to dispute it on August 9, 2019. Therefore, the tenant is within the ten-day time limit under the *Act*. The onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

The landlord provided undisputed evidence, as the tenant did not attend this hearing. I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the tenant caused extraordinary damage to the rental unit. The tenant caused plumbing damages, causing an expensive repair. The tenant ripped out the flooring and carpet and threw out the kitchen cabinets inside the rental unit, without the landlord's approval. The tenant tore up the garden beds in the courtyard, without the landlord's approval. The tenant engaged in hoarding as recently as September 12 and 24, 2019, blocking the fire exits to the rental unit, causing a fire hazard safety risk to the landlord and other occupants of the rental property.

As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

Accordingly, I find that the landlord is entitled to a ten (10) day Order of Possession, pursuant to section 55 of the *Act*. During the hearing, the landlord specifically requested a ten-day order of possession, to allow the tenant more time to move out. The landlord confirmed that the tenant has not paid rent for September 2019. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord **effective ten (10) days after service on the tenant**. Should the tenant or anyone on the premises 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: September 30, 2019

Residential Tenancy Branch