



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC MT**

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;
- A request for more time to cancel the One Month Notice pursuant to section 66.

EW appeared as agent for the landlord (“the landlord”). The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 28, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on December 3, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page.

Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on December 3, 2019.

I informed the landlord that in the event I dismissed the tenant's application to cancel the 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.

Issue(s) to be Decided

Is the tenant entitled to cancel the One Month Notice?

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified that the tenancy began on May 1, 2019 and submitted a copy of the tenancy agreement. Rent is \$375.00 and the tenant provided a security deposit of \$187.50 which the landlord holds.

On October 8, 2019, the tenant, while intoxicated, "smashed everything" in her room resulting in, among other damage, holes in the wall and destroyed appliances. On the same day, the tenant was viewed on the landlord's camera system assaulting another tenant by pushing her head into a wall.

As a result of these and other actions, the landlord issued a One Month Notice dated October 11, 2019. The landlord served the Notice by posting to the tenant's door on October 11, 2019. Under section 90, the landlord effected service three days after posting, that is, on October 14, 2019. The effective day of the Notice was November 11, 2019, corrected to November 30, 2019.

The Notice, a copy of which was submitted as evidence, 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
 - `significantly interfered with or unreasonably disturbed another occupant or the landlord
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant
 - put the landlord's property at significant risk

The tenant did not file an Application to Dispute the One Month Notice within the ten days.

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

Analysis

I have reviewed all documentary evidence and testimony. Only the landlord attended the hearing although the tenant was served with Notice of the Hearing and the Application for Dispute Resolution.

Rule 7.3 of the 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 reapply.

As the applicant did not attend the hearing and in the absence of any evidence or submissions, I order the tenant's application dismissed without leave to reapply.

I find the form and content of the One Month Notice complies with section 52 of the *Act*.

I find the tenant was served with the Notice on October 14, 2019 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not file an Application to Dispute the Notice within ten days of service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of November 30, 2019 requiring the tenant to vacate the rental unit by that date.

As the tenant continued to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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 16, 2019

Residential Tenancy Branch