

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agents, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the e-mail address provided in the hearing.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Agents testified that the person named as the Landlord in the Application is an Agent for the Landlord, and that the Landlord is a named corporation. Having reviewed the documentary evidence before me and the uncontested testimony of the Agents, I am satisfied that the Landlord is in fact a named corporation and I have amended the Application to properly name the Landlord.

Preliminary Matter #2

I advised the Agents that the documentary evidence before me from the Landlord was not received by the Residential Tenancy Branch (the "Branch") until February 20, 2020, and inquired how and when this documentation was served on the Tenant. The Agents stated that it was posted to the door of the Tenants rental unit on February 7, 2020, at 8:41 P.M. In support of this testimony the Agents provided a photograph of the evidence attached to the Tenant's door and an e-mail with a time stamp showing when the picture was emailed to the Landlord. Based on the undisputed testimony and documentary evidence before me, I am satisfied that the Tenant was deemed served with the Landlord's documentary evidence on February 10, 2020, three days after it was posted to the door of the rental unit, in accordance with the *Act* and the Rules of Procedure. I have accepted it for consideration accordingly.

Issue(s) to be Decided

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

The Agents stated that on December 18, 2019, a One Month Notice was personally served on the Tenant. In their Application the Tenant acknowledged receipt of the One Month Notice on December 18, 2019.

The One Month Notice in the documentary evidence before me, dated December 18, 2018, has an effective vacancy date of January 31, 2020, and indicates that it was personally served on the Tenant on December 18, 2019.

The One Month Notice provides the following reasons for ending the tenancy:

- Tenant or 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; and
 - Caused extraordinary damage to the rental unit or residential property.

Although the Agents cited a fire incident from December 2018, and stated that the Tenant is in breach of a material term of the tenancy agreement, the primary reason for serving the One Month Notice was a flood originating in the Tenant's rental unit which necessitated hazmat, remediation, and repair work to numerous areas of the residential property at an anticipated cost in excess of \$20,000.00.

The Agents testified that on December 9, 2019, another occupant of the building notified the Landlord of what looked like water damage in a common area of the building, originating from the Tenant's rental unit. The Agent stated that two agents for the Landlord attended the Tenant's rental unit on December 9, 2019, in relation to the incident, and that the Tenant acknowledged at that time that the toilet had overflowed and that they had not reported it or resolved the issue as they did not see it as a big deal.

The Agents submitted documentary evidence in the form of photographs and work orders showing that remediation and hazmat work was required, due to the nature of the overflow, to the following common areas of the property:

- Front office,
- Hallway,
- Common room and kitchen,
- Hall closet,
- Computer room,

- Elevator,
- Laundry room,
- Bathrooms,
- Mechanical room,
- Electrical room, and
- Janitors closet.

The Agents stated that although the final invoice has not been received, the contractor anticipates that it will be in excess of the \$20,000.00 insurance deductible and that a full HVAC clean was required due to sewage contamination from the Tenant's rental unit. The Agents also stated that although the Tenant acknowledged only flushing and overflowing the toilet twice, the nature and scope of the flood is such that the issue likely was ongoing for several days, and that in any event, the Tenant failed to report the issue, despite readily available emergency contact information with which to do so. In support of their testimony the Agents provided, among other things, copies of documentation from the restoration company, photographs of damage, and a written statement detailing the incident and subsequent interactions with the Tenant.

The Agents stated that they are unsure if the Tenant is currently residing in the rental unit but that they believe his possessions remain inside. The Agents acknowledged that February rent has been paid for use and occupancy of the rental unit and therefore found it reasonable to request an Order of Possession for 1:00 P.M. on February 29, 2020.

Neither the Tenant nor an agent acting on their behalf appeared at the hearing to present any evidence or testimony for my consideration.

Analysis

Based on the evidence and testimony before me, I am satisfied that the Tenant was personally served with the One Month Notice on December 18, 2019.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a 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, put the landlord's property at significant risk, or caused extraordinary damage to a rental unit or residential property.

Based on the uncontested documentary evidence and oral testimony before me for consideration from the Agents, I am satisfied, on a balance of probabilities, that the Tenant caused a flood which seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the Landlord's property at significant risk, and caused extraordinary damage to the rental unit or residential property.

As a result of the above, and pursuant to rule 7.3 of the Rules of Procedure, I therefore dismiss the Tenants' Application seeking cancellation of the One Month Notice without leave to reapply. Having made this finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

The One Month Notice in the documentary evidence before me is signed and dated by the Landlord, gives the address of the rental unit, states the effective date of the One Month Notice and the reason for ending the tenancy, and is in the approved form. As a result, I find that it complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Although the effective date of the One Month Notice, the Landlord testified that the One Month Notice was personally served on August 8, 2018, and that rent is due on the first day of each month under the tenancy agreement. As a result, I find that this date does not comply with the minimum notice period required under section 47(2) of the *Act*. Pursuant to section 53 of the *Act*, I find that the effective date is therefore automatically corrected to September 30, 2018.

Although the effective date of the One Month Notice, January 31, 2020, has passed, the Agents testified that rent for use and occupancy of the rental unit has been paid in full for February, 2020. As a result, the Order of Possession will therefore be effective at 1:00 P.M. on February 29, 2020.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on February 29, 2020, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and 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: February 25, 2020

Residential Tenancy Branch