



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, OPC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for:

- an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act;
- an order of possession for the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice); and
- recovery of the filing fee.

The landlord's agent (landlord), the tenant and his son-in-law/assistant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the tenant confirmed receiving the landlord's application, amended application, and evidence. The tenant also confirmed not providing documentary evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

In this case, the landlord originally filed for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act. The landlord then amended their application to include a request for an order of possession of the rental unit based upon their Notice.

The tenant confirmed receiving the landlord's amended application. The hearing proceeded first on the part of the landlord's application dealing with enforcement of their Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to the Notice and recovery of the filing fee?

Background and Evidence

The landlord submitted evidence this tenancy began on January 1, 2020, that monthly rent is \$950, and the tenant paid a security deposit of \$475. The landlord filed into evidence a copy of the written tenancy agreement.

The landlord submitted evidence that the tenant was served the Notice, dated February 14, 2020, by attaching it to the tenant's door on that date, listing an effective end of tenancy date of March 31, 2020. The tenant confirmed receiving the Notice.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, March 31, 2020.

The cause as listed on the Notice alleged that the tenant or a person permitted on the property by the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant of the landlord, and put the landlord's property at significant risk.

The landlord submitted that the tenant and his guests have caused after hours noises affecting the peace and quiet enjoyment of their other tenants living in the multi-unit building, broken a pane of glass on the tenant's patio, and have created safety issues for other tenants by putting glass in the parking area.

The landlord submitted that the tenant's guests have been caught breaking into the building, damaging the door and have jammed the entrance door so that it would not lock, allowing unknown individuals to enter the premises.

The landlord also submitted that the tenant is distributing illegal substances from his apartment, shown by the excessive traffic of homeless people in and out of the building, and that many of these individuals are sleeping and urinating within the hallways.

The landlord submitted that they had also received multiple complaints from other tenants in the building, as shown by their documentary evidence.

The landlord submitted additional evidence supporting the causes listed on the Notice, such as the written warnings to the tenant to correct the breaches.

Tenant's response-

The tenant denied the landlord's testimony, saying he was nice to everyone and helps out around the building. The tenant said that he cleans the laundry and denied stealing laundry or jamming the entrance door.

The tenant said that when he received the Notice, he had a look at it and put it in a drawer, confirming that he did not apply to dispute the Notice.

Analysis

I have reviewed all the evidence and accept that the tenant was been served with the Notice as declared by the landlord. Absent evidence to the contrary, the Notice was deemed received by the tenant three (3) days after the Notice was served by attaching it to the tenant's door on February 14, 2020, pursuant to section 90 of the Act. I also find no evidence that the tenant applied to dispute the Notice.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the 1 Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have also reviewed the landlord's relevant evidence and find on a balance of probabilities that the landlord submitted sufficient evidence to establish the causes listed on the Notice.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit.

As the effective date of the Notice has already passed, I find the landlord is entitled to an order of possession effective two days after service upon the tenant pursuant to section 55 of the Act.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenant.

Although I have ordered the tenancy will end pursuant to section 46 and 55(2)(b) of the Act, *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

The landlord confirmed that the tenant paid monthly rent for June 2020, and will return to the tenant the prorated amount of any rent owing from the day the tenant vacates or is removed from the rental unit.

I additionally find the landlord is entitled to recovery of the filing fee, and as such, I grant the landlord a monetary order in the amount of \$100.

As I have granted the landlord an order of possession of the rental unit based upon their Notice, I found it was not necessary to consider the portion of the landlord's application seeking an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act.

Conclusion

The landlord's application for an order of possession of the rental unit is granted.

The landlord is granted a monetary order in the amount of \$100 for recovery of their filing fee.

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 22, 2020

Residential Tenancy Branch