



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, RP, LRE, RR, OLC, OT, FFT

Introduction

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

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order regarding another issue not listed in the application for dispute resolution application; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The agent for the landlord (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The agent testified that the tenant left the tenant's application for dispute resolution in the landlord's drop box on July 16, 2020. While the above service does not constitute service under section 89 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act* as the agent confirmed receipt of the tenant's application for dispute resolution.

Issues to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Is the tenant entitled to an Order that the landlord's right to enter be suspended or restricted, pursuant to section 70 of the *Act*?
4. Is the tenant entitled to an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62 of the *Act*?
5. Is the tenant entitled to an Order for regular repairs, pursuant to section 32 of the *Act*?
6. Is the tenant entitled to an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the *Act*?
7. Is the tenant entitled to an Order regarding another issue not listed in the application for dispute resolution application of the *Act*?
8. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on August 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,195.00 is payable on the first day of each month. A security deposit of \$597.50 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that on June 30, 2020 a One Month Notice to End Tenancy for Cause (the "Notice") was posted on the tenant's door. A witnessed proof of service document stating same was entered into evidence.

The Notice states the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord.

The agent testified that the tenant constantly telephones the resident manager and the emergency phone line at all hours of the night regarding people trying to hack her phone and gas her out of her unit. The agent testified that the tenant calls the resident manager at all hours of the night to ask him to do tasks for her such as open her patio door and reach items on high shelves. The agent testified that the constant calls in the middle of the night are disturbing the quiet enjoyment, security and safety of the resident manager and other tenants.

The agent testified that the tenant's complaints have been investigated and are all without merit. The agent testified that the tenant's mental health may play a roll in the continuing phone calls.

Analysis

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. 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.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Based on the agent's testimony and the proof of service document entered into evidence, I find that service of the Notice was effected on the tenant on July 3, 2020, three days after its posting, pursuant to sections 88 and 90 of the *Act*. Pursuant to section 53 of the *Act*, the corrected effective date of the Notice is August 31, 2020.

Section 55 of the *Act* states that 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:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Since I have dismissed the tenant's application and have found that the Notice meets the form and content requirements of section 52 of the *Act*, I find that the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*.

Section 47(1)(d)(i) 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 significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

I accept the agent's undisputed testimony regarding the conduct of the tenant. I find that the tenant's constant late-night phone calls have unreasonably disturbed another occupant and or the landlord. The landlord is therefore entitled to an Order of Possession.

Conclusion

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

Pursuant to section 47 and 55 of the *Act*, I grant an Order of Possession to the landlord effective at 1:00 p.m. on August 31, 2020. Should the tenant 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: August 20, 2020

Residential Tenancy Branch