



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Atira Property Management, Inc. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: OPC
For the tenant: CNC, RP, MNDC, AAT, PSF, LRE, LAT, OLC

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for:

- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice).

The tenant applied for:

- an order cancelling the Notice issued by the landlord;
- an order requiring the landlord to make regular repairs to the rental unit;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests;
- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlord's agent (landlord) attended the hearing; however, the tenant did not attend.

The landlord stated she served the tenant with their application for dispute resolution, evidence and Notice of Hearing by attaching the documents to the tenant's door on August 8, 2020.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(2) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and make submissions to me.

Additionally, the landlord said she has not received the tenant's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) and was not aware his application was set for today.

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 evidence are reproduced here.

Preliminary and Procedural Matters -

Despite having his own application for dispute resolution set for hearing on this date and time, the application of the landlord and the Notice of these Hearings, the tenant did not appear.

Rules 7.3 and 7.4 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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, **in the absence of any evidence or submissions, I order the tenant's application dismissed, without leave to reapply.**

The hearing proceeded on the landlord's application only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit based upon their Notice?

Background and Evidence

The landlord submitted that this tenancy started on April 22, 2020 and monthly rent is \$375, due on the first day of the month. The rental unit is a single occupancy, hotel-type room.

The landlord submitted evidence that the tenant was served the Notice, dated July 13, 2020, by attaching it to the tenant's door on that date, listing an effective end of tenancy date of August 5, 2020. The tenant confirmed receiving the Notice on July 13, 2020, in his own application.

The causes listed on the Notice were:

- the tenant or a person permitted on the residential property by the tenant has;
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has;
 - (i)caused or is likely to cause damage to the landlord's property,
 - (ii)adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

The landlord said that the tenant and his girlfriend have committed several violent acts against the live-in caretaker, including assault when she was punched in the face, all for which they have been arrested and charged. Court dates for both the tenant and his girlfriend are upcoming.

The landlord submitted that the tenant has allowed his dog to defecate and run loose in the hallways of the residential property.

The landlord's relevant documentary evidence included a copy of the Notice, multiple critical incident reports notating the times and dates of the assaults to end the tenancy, and written communication with the tenant, warning him about the breaches in his tenancy agreement.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

The undisputed evidence is that the landlord served the tenant with the Notice on July 13, 2020, and the tenant received the Notice on that date, as confirmed in the tenant's application.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to August 31, 2020.

The Notice explained that the tenant had ten (10) days to file an application for dispute resolution at the Residential Tenancy Branch (RTB) in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice 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.

The undisputed evidence is that the tenant failed to make an application for dispute resolution to contest the Notice within 10 days of receiving it. The tenant had until July 23, 2020, to make the application and did not do so until August 4, 2020.

Additionally, the tenant's application was dismissed due to his failure to attend the hearing or serve the landlord with his application for dispute resolution.

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

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 corrected effective date of the Notice.

I have also reviewed the landlord's relevant evidence and find on a balance of probabilities that the landlord submitted sufficient evidence to prove the causes listed on the Notice, due to the violent assaults on the live-in caretaker.

I therefore find the landlord is entitled to an order of possession of the rental unit, pursuant to section 55(2)(b) of the Act effective two days after service of the order upon the tenant.

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession of the rental unit, effective two (2) days after it is served upon him. The order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it should become necessary.

The tenant is cautioned that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

The tenant's application is dismissed without leave to reapply, due to his failure to appear in support of his application and as I have granted the landlord's application.

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 4, 2020

Residential Tenancy Branch