



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened as a result of the landlord's two applications for dispute resolution 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) issued to the tenant; and
- recovery of the filing fee.

The landlord's agent (agent), their witness, and the tenant, TL, 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 evidence was discussed. The relevant evidence was a copy of the Notice. There was no evidence from the tenant.

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 are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

Although this matter was set to hear cross-applications, the tenant did not file an application for dispute resolution; rather, the landlord filed two applications seeking

enforcement of the same Notice. The agent said that most likely there was an error in his office.

The agent was then asked if he would prefer to withdraw the application filed on September 1, 2020, and he agreed that he did want the original application withdrawn.

As a result, the first listed application on the style of cause page has been withdrawn. I therefore did not consider the merits of that application and the hearing proceeded on the application filed September 8, 2020.

Issue(s) to be Decided

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

Background and Evidence

The landlord submitted evidence this tenancy began on November 1, 2019 and that monthly rent is \$2,500.00.

The landlord submitted evidence that the tenant, TL, was served the Notice, dated July 29, 2020, by personal service on that date, listing an effective end of tenancy date of August 31, 2020. The tenant confirmed receiving the Notice.

The agent said that when he arrived at the rental unit to serve the tenant, CG, he learned then that TL was residing at the rental unit as a tenant. Prior to that, according to the agent, he knew nothing about TL. The agent said he added TL's name to the Notice as a tenant.

The causes as listed on the Notice alleged that:

- 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 witness for the landlord, a corporal with the RCMP, testified that he has met with the owner of the residential property many times since May 2020 and voiced his concerns about the level and kind of activity going on at the property.

The witness said that the residential property is located in a residential area, including children playing, and that many times, people have fled the property at excessive speed to avoid the police, causing serious risks to public safety. The witness said law enforcement officers are unable to give chase, due to public safety concerns; however, the speeders run through the traffic lights and stop signs. The witness said that he has informed the landlord that each incident at the property which causes police officers to attend, and other first responders, is subject to a fine of \$1,250. The witness said there are 26 files for police attendance for this property, so the potential fines total \$32,500. This does not include ambulance and fire department attendance.

The witness and the agent explained that the tenant is operating an illegal and unlicensed recovery house, and is known to have criminal activity there.

The witness said that there have been weapons investigations and that stolen property has been located at the property.

Tenant's response-

The tenant said that he threw out the other listed tenant, CG, in February 2020, and there have been no problems since then.

The tenant said that he has talked with the owner of the property, who said everything was fine. To prove that point, the tenant submitted that the landlord has been accepting his monthly rent payments, even beyond the move-out date of the Notice.

The tenant confirmed not filing an application in dispute of the Notice as he did not fully understand he had to and because the landlord indicated to him everything was fine.

Landlord's witness' rebuttal –

The witness said the occupants of the recovery house are well know to the RCMP and that the incidents are ongoing, including a police visit on October 6, 2020.

Analysis

I have reviewed all the evidence and accept that the tenant was been served with the Notice by personal service as declared by the landlord on July 29. I also find no evidence that the tenant applied to dispute 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, August 31, 2020.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the 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 oral evidence and find that the landlord submitted sufficient evidence to establish the causes listed on the Notice.

Apart from that, I 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 cautioned that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenant.

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.

Conclusion

The landlord's initial application was withdrawn.

The landlord's secondary 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: October 15, 2020

Residential Tenancy Branch