



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Housing and Health
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the landlord: OPC
 For the tenant: CNC

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) issued to the tenant.

The tenant applied for:

- an order cancelling the Notice.

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

The agents provided affirmed testimony that they served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal delivery on September 23, 2020, and again on October 30, 2020.

Based upon the agents' oral and written submissions, I accept the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

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

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matters

Despite having his own hearing scheduled for 9:30 a.m. on November 16, 2020, and the landlord's application and notice of hearing, the tenant failed to attend the hearing. The hearing continued for 15 minutes.

Additionally, the agents confirmed they were aware the tenant had filed an application, but that they did not receive any evidence.

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 from the tenant, I order his application dismissed, without leave to reapply.**

Issue(s) to be Decided

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

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy with a start date of August 1, 2018, listing two tenants, monthly rent of \$347 each for

the two tenants, and a security deposit of \$187 being paid by each of the two tenants to the landlord.

The agent said one of the listed tenants has now passed away, leaving only the listed tenant here occupying the rental unit.

The landlord submitted evidence that on August 18, 2020, they served the tenant with the Notice, by attaching it to the tenant's door. The effective vacancy date listed on the Notice was September 30, 2020. The Notice was filed into evidence.

The tenant did file his application to dispute the Notice, but not within the 10 days allowed, as his application was made on September 23, 2020.

The causes listed on the Notice stated that:

- the tenant has allowed an unreasonable number of occupants in a rental unit;
- the tenant or a person permitted on the residential property by the tenant has;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- 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.

The agents submitted that the tenant has seriously jeopardized the health, safety or lawful right of the other tenants in the residential property by taping over the fire pull stations, rendering them unusable. This is not only a fire code violation, but puts the safety of the elderly, immobile residents in serious jeopardy.

Additionally, the agents submitted that one of their staff members has been threatened by the tenant, leaving her fearful of her safety. Included in some of the statements to the staff member was telling her to watch her back and that he had "boxer" friends.

Filed into evidence were photographs, shift reports, and breach letters to the tenant.

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 August 18, 2020, and the tenant confirmed in his application, perhaps incorrectly, that he received the Notice on August 17, 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 was deemed to have received the Notice on August 21, 2020, three days after it was posted, and therefore had until August 31, 2020, to make the application and did not do so until September 23, 2020.

Additionally, the tenant's application was dismissed due to his failure to attend the hearing.

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 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 disabling the fire alarm stations and the threats on staff members.

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: November 16, 2020

Residential Tenancy Branch