



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INTERGULF DEVELOPMENT COMO LAKE
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNE, OLC, FFT

Introduction and Preliminary Matters

On October 14, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for End of Employment (the “Notice”) pursuant to Section 48 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant did not make an appearance at any point during the 21-minute hearing. S.G. attended the hearing as an agent for the Landlord. All parties in attendance provided a solemn affirmation.

S.G. advised that the Landlord was never served the Notice of Hearing package by the Tenant. He stated that he went to the rental unit on November 4, 2020 to request an update from the Tenant because of the Notice. The Tenant showed him an email print out of the Tenant’s Application to dispute the Notice. S.G. subsequently contacted the Residential Tenancy Branch to obtain the Notice of Hearing package. Based on this undisputed testimony, as the Tenant did not serve this package in accordance with Section 89 of the *Act*, I dismiss the Tenant’s Application without leave to reapply.

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 that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.G. advised that the tenancy started on April 1, 2019, that rent was established at \$1,030.00 per month, and that it was due on the first day of each month. A security deposit of \$500.00 was also paid. A copy of the tenancy agreement was not submitted as documentary evidence.

He submitted that the Notice was served by posting it to the Tenant's door on October 7, 2020. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk", and because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property and jeopardize a lawful right or interest of another occupant or the landlord." The effective end date of the tenancy was noted as November 6, 2020.

He advised that the Tenant always has loud parties and smokes on the patio, contrary to the tenancy agreement. He stated that the Tenant's guests just hop over the fence to enter the rental unit and they smoke marijuana in the rental unit. The Tenant also had marijuana plants stored on the patio and he was warned to have them removed.

On September 30, 2020, smoke was observed to be billowing out of the rental unit, causing the fire alarm to be triggered. The Fire Department attended and evacuated the building. On October 6, 2020 an annual fire inspection of the building was conducted, and when S.G. entered the rental unit, he observed many extension cords leading to a closet that was closed off with a curtain. He observed a bright light emanating from behind the curtain and when he pulled it back, approximately 30 marijuana plants were in varying stages of cultivation. He took a picture and submitted this as documentary

evidence. He stated that he contacted the police about these plants and they eventually seized the plants.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As the Tenant did not attend the hearing or serve the Notice of Hearing package, I have dismissed his Application to dispute this Notice in its entirety. However, pursuant to Section 55(1) of the *Act*, in order to grant the Landlord an Order of Possession, I must still consider the validity of the Notice. In addition, while the Tenant applied to dispute a One Month Notice to End Tenancy for End of Employment, this was likely an error on the Tenant's part as he was not served with that notice.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Furthermore, I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) 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, or*
- (iii) put the landlord's property at significant risk;*

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) has caused or is likely to cause damage to the landlord's property, or*

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

With respect to the reasons on the Notice, I find that the Landlord has provided sufficient, undisputed testimony and evidence to justify the grounds for serving the Notice. Ultimately, as the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant's Application has been dismissed, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. Consequently, the Order of Possession takes effect on **January 31, 2021 at 1:00 PM** after service on the Tenant.

As the Tenant did not serve the Notice of Hearing package and as his Application was subsequently dismissed, I do not find that the Tenant was successful. Therefore, the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, as the Notice of Hearing package was not served to the Landlord pursuant to Section 89 of the *Act* or in accordance with the timeframe requirements of Rule 3.1 of the Rules of Procedure, I dismiss the Tenant's Application to dispute the One Month Notice to End Tenancy for Cause without leave to reapply. I grant an Order of Possession to the Landlord effective on **January 31, 2021 at 1:00 PM** after service of this Order on the Tenant. 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: January 7, 2021

Residential Tenancy Branch