



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Quay Pacific Property Management and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC-MT**

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (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.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

Based on the above, in the absence of any evidence or submissions from the applicant I order the application dismissed without liberty to reapply.

I note that section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

The agent testified that the tenant served the landlord with this application for dispute resolution via registered mail. I find that this application was served on the landlord in accordance with section 89 of the *Act*.

Issue to be Decided

If the tenant's application is dismissed or the landlord's Notice to End Tenancy is upheld, and the Notice to End Tenancy complies with the *Act*, is the landlord entitled to an Order of Possession, pursuant to section 55 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 approximately 30 years ago and is currently ongoing. Monthly rent in the amount of \$645.00 is payable on the first day of each month. A tenancy agreement was not entered into evidence.

The landlord testified that on December 28, 2020, a One Month Notice to End Tenancy for Cause with an effective date of January 31, 2021 (the "One Month Notice") was posted on the tenant's door. A witnessed proof of service document stating same was entered into evidence.

The One Month Notice states the following reasons 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;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;

The tenant's application for dispute resolution states that the One Month Notice was received by the tenant on December 28, 2020. The tenant filed this application for dispute resolution on January 8, 2021.

The agent testified that the landlord receives on average two complaints about the tenant per week because the tenant is frequently impaired by drugs and or alcohol and scream and yells in the hallways of the subject rental building. The agent testified that the tenant's behaviour is very disruptive to other tenants and that the tenant has also appeared naked and intoxicated in the hallway. The agent testified that the police have attended on several occasions due to the tenant's hallway behaviour.

The agent entered into evidence complaints against the tenant from other tenants of the building regarding incidents on the following dates:

- August 18, 2020
- August 19, 2020
- October 31, 2020
- October 3, 2020
- November 4, 2020
- November 29, 2020
- December 6, 2020
- December 23, 2020

The agent testified that the tenant was provided with a warning letter but did not change his behaviour. A warning letter dated August 8, 2019 was entered into evidence.

Analysis

Based on the tenant's application for dispute resolution, I find that the tenant received the One Month Notice on December 28, 2020.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The tenant did not dispute the Notice within 10 days of receiving it. The tenant applied for an extension to file this application for dispute resolution; however, this claim was dismissed without leave to reapply because the tenant did not attend this hearing.

I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being January 31, 2021. As the tenant did not vacate the subject rental property on that date, I award the landlord an order of possession. The landlord will be given a formal Order of Possession which must be served on the tenant. The agent testified that the landlord is not seeking a two-day order of possession and agrees to allow the tenant to remain at the subject rental property until April 30, 2021. If the tenant does not vacate the rental unit by 1:00 p.m. on April 30, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

In addition to my above reasons, I also award the landlord an Order of Possession pursuant to sections 47(1)(d)(i) and 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 that the tenant is often inebriated and frequently yells and screams in the hallways. I find that this continued and pervasive behaviour constitutes an unreasonable disturbance to the other tenants of the subject rental building. Pursuant to section 47(1)(d)(i) of the *Act*, I uphold the One Month Notice. I find that the One Month Notice complies with the form and content requirements of section 52 of the *Act*.

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:

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

I find that since the One Month Notice complies with section 52 of the *Act*, the tenant's application to cancel the One Month Notice was dismissed, and the One Month Notice was upheld, the landlord is entitled to an Order of Possession effective at 1:00 p.m. on April 30, 2021.

Conclusion

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

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on April 30, 2021**, which should be served 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: April 06, 2021

Residential Tenancy Branch