



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wedgewood Arms Apt and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNC-MT, LAT
For the landlord: OPC

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an extension of the timeline for disputing the Notice, under section 66; and
- an order of authorization to change the lock, pursuant to sections 31 and 70

The landlord's application pursuant to the Act is for an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55.

I left the teleconference connection open until 9:47 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by manager DJ (the landlord), 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 landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord affirmed he understands it is prohibited to record this hearing.

Preliminary Issue - Tenant's application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

Preliminary Issue - Service of the Landlord's application

I accept the landlord's testimony that the tenant was served with the application in person on March 06, 2021, in accordance with section 89(2)(a) of the Act. The landlord served the evidence in person on April 12, 2021.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the landlord entitled to an order of possession based on the Notice?

Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate his claim.

The landlord affirmed the tenancy started on September 12, 2018. Monthly rent is \$650.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$325.00 was collected and the landlord holds it in trust.

The landlord stated he served the Notice in person on January 26, 2021 and the tenant continues to occupy the rental property. The tenant's application was submitted on February 18, 2021.

A copy of the Notice was provided. The Notice is dated January 29, 2021 and the effective date is February 28, 2021. The reasons to end the tenancy are: the tenant or a

person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

Analysis

Based on the undisputed landlord's testimony, I find the tenant was served the Notice in person on January 26, 2021, in accordance with section 88(1) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

Section 47(4) of the Act states the tenant has 10 days to dispute a notice. As the tenant disputed the notice on February 18, 2021, I find the tenant disputed it after the statutory deadline.

Section 47(5) of the Act states:

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Section 47(5) of the Act is mandatory and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property. The tenant did not substantiate there were circumstances beyond his control to submit his application after section 47(4) deadline.

As the tenant is occupying the rental unit and the effective date of the Notice is February 28, 2021, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(1)(b) of the Act.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an order of possession to the landlord effective **two days 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: April 30, 2021

Residential Tenancy Branch