



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON INVESTMENTS LTD. d.b.a. KELSON GROUP
PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPC, FFL
For the Tenant: CNC

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim:

- to cancel a One Month Notice to End Tenancy for Cause dated January 29, 2021 ("One Month Notice").

The Landlord filed a claim for:

- an Order of Possession for Cause, based on having served the Tenant with the One Month Notice;
- recovery of the \$100.00 Application filing fee.

Two agents for the Landlord, D.M. and J.R. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Agents were given the

opportunity to provide their evidence orally and respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant was provided with a copy of the Notice of a Dispute Resolution Hearing on February 12, 2021; however, the Tenant did not attend the teleconference hearing scheduled for May 10, 2021 at 9:30 a.m. (Pacific Time).

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. The Landlord’s Agents and I attended the hearing on time and were ready to proceed, and there was no evidence before me that the Parties had agreed to reschedule or adjourn the matter; accordingly, I commenced the hearing at 9:30 a.m. on May 10, 2021, as scheduled.

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 reapply. The teleconference line remained open for 22 minutes, however, neither the Applicant Tenant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration. As a result, and pursuant to section 62 of the Act and Rule 7.3, I **dismiss the Tenant’s Application without leave to reapply**.

The Agent testified that the Tenant was served with the Landlord’s Notice of Hearing documents by Canada Post registered mail, sent on March 26, 2021. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Landlord’s Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agents in the absence of the Tenant.

Preliminary and Procedural Matters

The Tenant provided her email address in the Application, and the Agent, D.M., provided his email address for the Landlord in the hearing. The Agents also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I asked the Agent for the Landlord's name in this matter, as the Landlord identified on the Application did not appear to be a complete legal name. The Agent advised me of the Landlord's legal name, along with the property management company's doing-business name; therefore, I amended the Landlord's name in the Applications, pursuant to section 64(3)(c) and Rule 4.2.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act as to form and content.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agents confirmed that the tenancy began as a fixed-term, starting on January 18, 2018, and running to December 31, 2018, and then operating on a month-to-month basis. The Tenant owed the Landlord a monthly rent of \$972.00 under the tenancy agreement, due on the first day of each month. The Agents confirmed that the Tenant paid the Landlord a security deposit of \$462.50, and no pet damage deposit.

The Agents confirmed that the Landlord served the Tenant with a One Month Notice signed and dated January 29, 2021, with the rental unit address, and it was served by being attached to the door of the rental unit on January 29, 2021. Pursuant to section 90 of the Act, the One Month Notice was deemed served three days after it was posted on the door, or on February 1, 2021. Therefore, according to section 47(2) of the Act, the effective vacancy date would be (a) not earlier than one month after the date the notice is received, and (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. Accordingly, the effective vacancy date is corrected by section 53 of the Act to March 31, 2021.

The grounds for the eviction were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.

In the hearing, the Agent, D.M., said:

The main reason we want the Order is to ensure there is a secure environment for all tenants in building. The police have been called twice by building managers. Both incidents were due to violence. In the first, a man with large knife on his belt was seen entering the Tenant's apartment. An argument was heard [in the rental unit], and the man's intentions with the knife were not known, so the building manager phoned the police. That was last October.

On January 29, 2021, [the building manager] received multiple phone calls from concerned tenants. There was a large domestic dispute in [the rental unit]. [The building manager] attended and saw the husband/boyfriend bleeding – there was blood on the floor. That's not the environment that we want our tenants to live in. We don't want to wait until someone's badly wounded. The level of violence here is not something we want to sustain.

That's my understanding of the situation . I'm the new property manager, but I got background from the building manager. Nothing personal against [the Tenant], but we can't have than kind of violence carrying on in the building.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 47 of the Act allows the landlord to end a tenancy for 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

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

...

In this case, the Landlord alleged that the Tenant had incidents for which the building manager had to call the police. The last incident involved a "large domestic dispute" that resulted in blood being spilled.

When I consider all the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet their burden of proof on a balance of probabilities, and to support the validity of the One Month Notice.

I also find that the One Month Notice issued by the Landlord complies with section 52 of the Act as to form and content. Given the above, and pursuant to section 55 of the Act, I find that the Landlord is entitled to an Order of Possession. Accordingly, I award the Landlord with an Order of Possession of the rental unit. As the effective vacancy date has already passed, the Order of Possession will take effect two days after the Tenant is served with the Order of Possession.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice. I dismiss the Tenant's Application wholly, as the Tenant did not attend the hearing to present the merits of her claim. Further, the Landlord is successful in their application for an order of possession further to having served the Tenant with a One Month Notice. Further, I find that the One Month Notice is valid and effective as of March 31, 2021.

I grant the Landlord an **Order of Possession effective two days after it is served** on the Tenant.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 10, 2021

Residential Tenancy Branch