



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNR-MT, OLC, MNDCT, RP, RR, LRE, PSF, MNRT, LAT
Landlord: OPC, FFL

Introduction

This was a cross application hearing that 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;
- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 62;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- authorization to change the locks, pursuant to section 31; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") and the building manager attended the hearing and were 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, building manager and I were the only ones who had called into this teleconference.

The agent testified that the landlord was not served with the tenant's application for dispute resolution.

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.

Neither party entered a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") into evidence. I require a copy of the 10 Day Notice in order to determine whether it complies with section 52 of the Act. This is a requirement in order to determine whether an order of possession can be issued, pursuant to section 55 of the Act. I therefore cannot award the landlord an Order of Possession under section 55 of the *Act* regarding the 10 Day Notice.

The agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on March 23, 2021. A Canada Post receipt stating same was entered into evidence. I find that the tenant was deemed served with the landlord's application for dispute resolution on March 28, 2021, five days after it was mailed, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*?

2. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent and the building manager, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on November 1, 2019 and is currently ongoing. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The building manager testified that he personally served the tenant's brother at the subject rental property with a One Month Notice to End Tenancy for Cause (the "One Month Notice") on January 31, 2021. The building manager testified that the tenant's brother resided with the tenant at that time. The landlord entered into evidence a witnessed proof of service document stating same.

Pages 1 and 3 of the One Month Notice were entered into evidence. The building manager testified that all three pages of the One Month Notice were served on the tenant on January 31, 2021. The agent testified that there must have been an error in the upload to the Residential Tenancy Branch. In the hearing I accepted the building manager's undisputed testimony that he served all three pages of the One Month Notice on a person residing at the subject rental property with the tenant, in accordance with section 88 of the *Act*. I allowed the landlord 24 hours to upload a complete copy of the One Month Notice into evidence. I find that the allowance of late evidence does not prejudice the tenant as pursuant to my above finding, the tenant was properly served with all three pages of the One Month Notice.

The landlord entered the One Month Notice into evidence within the allotted 24 hours. 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.

The details of cause on the One Month Notice states:

September 28, 2020 a letter sent reminding tenant to insure they are not to be involved in illegal activities that is disturbing other tenant

October 7, 2020 second letter sent to the tenant regarding noise that is disturbing to other tenants.

December 2, 2020 final warning letter to cease disturbing other tenants in the building with loud noise, yelling & screaming coming from the suite. Additionally the tenant changed the lock on the suite door without permission and no key has been provided to landlord.

[reproduced as written]

The letters referred to in the details of cause section of the One Month Notice were entered into evidence.

The One Month Notice is dated January 22, 2021 and has an effective date of February 28, 2021.

The building manager testified that the tenant has been causing a lot of trouble at the subject rental property due to her and her associates drug addiction. The building manager testified that the tenant is frequently banging on other tenant's doors asking for cigarettes and drugs and that this behaviour is frightening and disturbing to the other tenants in the building.

The building manager testified that the tenant frequently argues with her boyfriend and other tenants in the hallway.

The building manager testified that the tenant changed the deadbolt in the subject rental property without permission.

The building manager testified that he has spoken with the tenant on numerous occasions, but the tenant's behaviour has not changed.

The agent testified that the landlord has not received an application for dispute resolution from the tenant to dispute the One Month Notice.

Analysis

As stated in the background/evidence section of this decision, I find that the tenant was served with the One Month Notice in accordance with section 88 of the *Act*.

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 One Month Notice within 10 days of receiving it. 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 One Month Notice, that being February 28, 2021. As the tenant did not vacate the subject rental property on that date, I award the landlord a two-day order of possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

The tenants' application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 04, 2021

Residential Tenancy Branch