



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. The landlord’s spouse attended the first 15 minutes of the hearing and did not provide testimony; she disconnected to improve the audio of the landlord as they were sharing a line.

The tenant attended the hearing at 11:00 AM and identified himself. The tenant’s connection was poor, and his voice was breaking up. The tenant explained he was working and in a truck; he stated he could not get time off work for the hearing. The tenant reconnected shortly afterward and explained he had stopped driving a vehicle; the connection was improved and adequate. The hearing continued.

At the outset, the tenant stated he intended to move out soon. The parties discussed a settlement before either gave evidence. The tenant then suggested a moving-out date. The landlord refused to consider the date. Then, 11 minutes after the hearing began, the tenant suddenly and without warning, ended the connection; his final words before he hung up were, “I will lose my job”. The landlord and I waited on the conference call for 15 more minutes and the tenant did not call back in. The tenant did not provide evidence or testimony.

The hearing ended after 26 minutes. The tenant did not reconnect.

Rule 7.3 of the Rules of Procedure provides as follows:

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 reapply.*

As the applicant tenant did not attend the entire hearing and in the absence of any evidence or submissions on his behalf, I order the tenant's application dismissed without leave to reapply.

Order of Possession

The landlord requested an Order of Possession pursuant to section 55 which states as follows:

55 (1) 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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not remain in the hearing. The landlord testified that the month-to-month tenancy began on November 15, 2020. Rent is \$875.00 monthly payable on the first of the month. The tenant

provided a security deposit of \$437.50 which the landlord holds. The landlord explained that the tenant's unit is below the landlord's home.

The landlord testified to many disturbances caused by the tenant, including loud, upsetting sounds of fighting coming from the unit often in the middle of the night when the landlord's family was sleeping. As a result, the police have been called to the unit "8 or 9 times" beginning November 26, 2021. The landlord stated that he and his family are terrified of the tenant.

The landlord issued a One Month Notice to End Tenancy for Cause. The landlord testified that the tenant was served with the Notice on February 27, 2021 by posting to the tenant's door, thereby effecting service under section 90 of the Act three days later, that is, on March 2, 2021. The tenant submitted a copy of the Notice which is in the standard RTB form which complied with section 52 (form and content).

I find the landlord served the tenant with the Notice on March 2, 2021 in compliance with the Act.

The landlord submitted substantial evidence of the tenant's significance disturbance of the landlord and his family. The landlord provided credible evidence.

The tenant has not vacated the unit. The tenant filed an Application to cancel the Notice on March 7, 2021 within ten days but has failed to attend the entire hearing of the tenant's application.

The landlord requested an Order of Possession.

Analysis

As the tenant has failed to participate in this hearing after disconnecting from the conference call shortly after it began, and as he has not submitted testimony or evidence, I dismiss the tenant's request to cancel the One Month Notice.

Pursuant to section 55(1), the director **must** grant to the landlord an Order of Possession of the rental unit if the landlord's Notice complies with section 52 and the tenant's application is dismissed.

I determine the landlord's Notice complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an Order of Possession.

I suggest that the landlord serve the Order in the presence of the police.

Conclusion

I dismiss the tenant's application without leave to reapply including the tenant's application to set aside the One Month Notice.

I grant the landlord an Order of Possession which is effective two days after service on the tenant.

The landlord must serve this Order on the tenant.

If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia enforceable 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 15, 2021

Residential Tenancy Branch