



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act") for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated March 23, 2021 ("1 Month Notice") pursuant to section 47 of the Act.

The Landlord's agent ("Agent") appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 9:30 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Agent testified that the Notice of Dispute Resolution Proceeding Hearing and the Landlord's evidence ("NOH Package") was served on the Tenant by registered mail on March 23, 2021. The Agent submitted a registered mail receipt which provided the tracking number of the NOH Package to corroborate her testimony regarding service. I find that the NOH Package is deemed to have been served on Tenant on March 28, 2021 in accordance with sections 88, 89 and 90 of the Act, being 5 days after the NOH Package was mailed.

Issue to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

The Agent testified that the tenancy commenced on November 1, 2018 for a one-year fixed term ending October 31, 2019. The rent is \$375.00 per month which is due on the 1st day of each month. The Tenant paid a security deposit of \$187.50 which the Agent confirmed is still being held by the Landlord.

The Agent testified the 1 Month Notice was served on the Tenant's door on March 23, 2021. The Agent submitted a signed proof of service on Form RTB-34 corroborating her testimony regarding service. I find that the 1 Month Notice was served in accordance with section 88 of the Act and that, pursuant to section 90, the 1 Month Notice is deemed to have been received by the tenant on March 26, 2021.

The Agent testified that the effective date for move-out stated on the 1 Month Notice is April 30, 2021. The Agent stated that the Tenant is still residing in the rental unit and the rent is paid until October 31, 2021. The Agent testified that the reasons for issuing the 1 Month Notice are that the Tenant has put the Landlord's property at significant risk and the tenant is in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. I have examined the 1 Month Notice and find that the 1 Month Notice was on the prescribed form and it contains the information required by section 52 of the Act.

The Agent testified the Tenant has a "hoarding issue". She stated the Landlord's employees have made multiple attempts to assist the tenant to remove excessive personal possessions from the rental unit. The Agent stated a written warning letter was given to the Tenant by the Landlord on October 18, 2019 regarding her hoarding. This written notice advised the tenant there was an excessive amount of clutter in the rental unit which was a fire hazard. The Landlord further testified that a second written warning letter was given to the Tenant by the Landlord on November 13, 2020 regarding the excessive clutter in the rental unit. The Agent stated that the Tenant did not take any

action to reduce the number of items in the rental unit after receiving either the first or second warning letters. The agent submitted copies of the two warning letters as well as 7 photos showing the amount of clutter in the rental unit.

The Agent further testified an inspection by the City of Nanaimo Fire Rescue Department was performed on December 19, 2020 ("Inspection Report"). The Inspection Report stated that there was an "excessive fire load" due to hoarding of combustible material. The Inspection Report states that the fire load must be reduced by 50% within 30 days of the report. The Agent submitted a copy of the Inspection Report.

The Agent further stated that the tenant did not take any steps to reduce the contents in the rental unit as required within the 30-day period required by the Inspection Report. However, as the COVID-19 pandemic had started, the Landlord deferred taking steps to end the tenancy. The Agent testified that, notwithstanding the additional time the Tenant has had to reduce the contents in the rental unit by the date required by the Inspection Report, the Tenant has not taken any steps to reduce the fire load in the rental unit.

Analysis

Subsections 47(1)(d)(iii) provides that a landlord may give notice to end the tenancy if the tenant has put the landlord's property at significant risk. Subsections 47(4) and 47(5) provide:

- 47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (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.

[emphasis added in italics]

I accept the undisputed affirmed testimony of the Agent and find the 1 Month Notice was properly served on the Tenant's door on March 23, 2021. The Tenant had until April 5, 2021 to file an application to dispute the 1 Month Notice. There is no evidence before me that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on April 30, 2021. As of the date of this hearing, the Tenant has not vacated the rental unit. Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

In addition, I find that the undisputed affirmed testimony and evidence submitted by the Agent has established that the Tenant has put the Landlord's property at significant risk. I find that the Landlord has met the burden of proving cause under subsection 47(1)(d)(iii) of the Act and is therefore entitled to an Order of Possession based on that subsection as well.

Conclusion

The Landlord is provided with an Order of Possession effective at 1:00 pm on October 31, 2021 after service of this Order on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant or anyone on the premises 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: October 5, 2021

Residential Tenancy Branch