



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, FFL

Tenant: CNC, OLC, MNDCT; CNR, OLC, MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the “Act”), I was designated to hear three crossed applications regarding a tenancy.

Having issued a One Month Notice To End Tenancy For Cause (the “One Month Notice”) the Landlord applied on June 21, 2021 for:

- an order of possession for the rental unit, pursuant to section 55 of the Act; and
- authorization to recover the filing fee from the Tenant, pursuant to section 72.

In their first application, the Tenant applied on June 22, 2021 for:

- an order to cancel the One Month Notice, pursuant to section 47;
- an order for the Landlord to comply with the Act, Regulation, or the tenancy agreement, pursuant to section 62; and
- a monetary order for monetary loss or other money owed, pursuant to section 67.

In their second application, the Tenant applied on September 3, 2021 for:

- an order to cancel a 10 Day Notice To End Tenancy For Unpaid Rent, pursuant to section 46;
- an order for the Landlord to comply with the Act, Regulation, or the tenancy agreement, pursuant to section 62; and
- a monetary order for monetary loss or other money owed, pursuant to section 67.

The Landlord and the Tenant’s agent (the “Tenant”) were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Landlord's Notice of Hearing was made available to them on July 13, 2021. The Landlord testified they served the Tenant with the dispute resolution proceeding package (DRPP) in person on July 15, 2021. I find the Landlord served the Tenant in accordance with section 89 of the Act.

The Tenant's first Notice of Hearing was made available on July 14, 2021, and the second on September 16, 2021. The Tenant testified they did not know how or when the first and second Notices of Hearing were served on the Landlord. The Landlord testified they did not receive the Tenant's first Notice of Hearing.

In reviewing the service of the Tenant's Notices of Hearing, I must consider the Residential Tenancy Branch's Rules of Procedure 3.5, which states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Residential Tenancy Branch Rules of Procedure Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As the Tenant failed to prove they served their applications on the Landlord in accordance with the Act, I dismiss both the Tenant's applications for dispute resolution.

The remainder of this decision will address the Landlord's application.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover their filing fee from the Tenant?

Background and Evidence

The parties agreed on the following regarding this periodic tenancy: it began on October 14, 2019; rent is \$1,600.00, due on the first of the month; and the Tenant paid a security deposit of \$800.00, which the Landlord still holds.

The Landlord testified they served the Tenant with the One Month Notice on June 4, 2021 by registered mail; the Landlord submitted a copy of the One Month Notice as evidence. The One Month Notice is signed and dated by the Landlord, gives the

address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Regarding the reasons checked on the One Month Notice for ending the tenancy, the Landlord testified the Tenant was repeatedly late paying rent; he also testified and submitted evidence that the Tenant had called him a racist and a sexist, and had otherwise unreasonably disturbed him. As a result, he issued the One Month Notice for cause on June 3, 2021.

The Landlord testified they did not have the keys to the rental unit, did not know if the Tenant had moved out, and understood the Tenant to be occupying the rental unit on the day of the hearing.

In their testimony, the Tenant stated they had moved out of the rental unit the day before the hearing.

In their first application, the Tenant applied to cancel the One Month Notice on June 22, 2021.

Analysis

[Section 47](#) of the Act allows the Landlord to end a tenancy for cause.

I find that the One Month Notice meets the form and content requirements of section 52 of the Act.

I find the Landlord served the Tenant with the One Month Notice in accordance with section 88 of the Act. According to the undisputed affirmed testimony of the Landlord, they served the Tenant with the One Month Notice by registered mail on June 4, 2021; therefore, according to section 90 of the Act, I deem the One Month Notice received by the Tenant on June 9, 2021.

Section 47(4) provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the Tenant is deemed to have received the One Month Notice on June 9, 2021, their deadline to dispute it was June 19, 2021.

As the Tenant applied to cancel the One Month Notice on June 22, 2021, I find the Tenant has not filed an application for dispute resolution within the timeline required

under section 47(4) of the Act. Accordingly, I find that the Tenant is conclusively presumed, under section 47(5), to have accepted that the tenancy ended on the effective date of the One Month Notice, July 31, 2021, and was required to vacate the rental unit by that date.

Therefore, in accordance with section 55 of the Act, I find that the Landlord is entitled to an order of possession.

As the Landlord was successful in their application, I find they are entitled to recover the filing fee from the Tenant under section 72. Pursuant to section 38, I order the Landlord to retain \$100.00 of the Tenant's security deposit for this purpose.

Conclusion

The Tenant's applications are dismissed.

The Landlord's application is granted.

I hereby grant the Landlord an order of possession, which must be served on the Tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby order the Landlord to retain \$100.00 of the Tenant's security deposit.

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 22, 2021

Residential Tenancy Branch