



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) W.R.	310043326	OPC, FFL
(Tenant) E.G.O.	310043541	CNC, FFT

Introduction

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

The Landlord filed a claim for:

- an Order of Possession for Cause, based on having served two One Month Notices to End Tenancy for Cause dated June 25, 2021 and August 26, 2021, ("One Month Notices"); and
- recovery of the \$100.00 application filing fee.

The Tenant filed a claim for:

- an Order cancelling the One Month Notice dated June 25, 2021; and
- recovery of the \$100.00 application filing fee;

The Landlord, W.R., and his two advocates, J.G. and A.G. ("Advocates"), 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 Landlord and his Advocates, 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 Landlord and his Advocates.

I explained the hearing process to the Landlord and gave him an opportunity to ask

questions about it. During the hearing the Landlord was given the opportunity to provide his 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.

The RTB provided the Tenant with a copy of the Notice of a Dispute Resolution Hearing on July 26, 2021; however, the Tenant did not attend the teleconference hearing scheduled for November 15, 2021 at 11:00 a.m. (Pacific Time). The phone line remained open for 20 minutes and was monitored throughout this time. The only persons to call into the hearing were the respondent Landlord and his Advocates.

Rule 7.1 states that the dispute resolution hearing will commence at the scheduled time, unless otherwise set by the arbitrator. The Respondent Landlord 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 11:00 a.m. on November 15, 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 20 minutes, however, neither the Applicant nor an agent acting on her behalf attended to provide any evidence or testimony for my consideration.

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

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to the recover of his \$100.00 Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed in the hearing that the Parties' fixed-term tenancy began on July 1, 2017, ran to July 30, 2018, and then operated on a month-to-month basis. The Landlord confirmed that the Tenant is required by the tenancy agreement to pay him \$2,400.00 per month, due on the first day of each month. He also confirmed that the Tenant paid him a security deposit of \$1,200.00, and no pet damage deposit. The Landlord said that he still holds the security deposit, as the Tenant has not yet provided her forwarding address to him, although he said she moved out of the rental unit on November 4, 2021. The Landlord said the Tenant has not paid rent for November 2021, and that he would like an order of possession for the rental unit.

The Landlord submitted a copy of the first One Month Notice, which was signed and dated June 25, 2021, and which has the rental unit address on it. The One Month Notice was served via registered mail on June 25, 2021, with an effective vacancy date of July 31, 2021. The One Month Notice was served on the grounds that the Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

In the "Details of Event" on the One Month Notice, the Landlord wrote:

[The Tenant] is the Tenant of record for the premises at [rental unit address], but she is not residing there. [She] is utilizing the premises as a short term rental and is engaged in an activity at this location that has voided the owner's insurance. [The Tenant's] actions have placed the owner and other residents of the building at risk.

In the hearing, I asked the Landlord and his Advocates why I should confirm the One Month Notice, rather than cancelling it, as the Tenant has requested.

This One Month Notice – otherwise the Landlord is at significant risk, with insurance policy. A second One Month Notice talks about a late payment for rent dated August 26, 2021. My receipt is dated September 17th at 10:12 and that submission contains the application for an amendment – form RTB #42L - along with the One Month Notice, proof of service, evidence of late rent, and the tenancy agreement and addendum. Also, the August 10 Day Notice with service and proof of service and registered mail receipt.

That One Month Notice was not disputed by the Tenant.

The second One Month Notice was signed and dated August 26, 2021, it has the rental unit address, it was served via registered mail on August 26, 2021, with an effective vacancy date of September 30, 2021, and it was served on the grounds that the Tenant is repeatedly late paying rent. In the "Details of Event(s)" section of this One Month Notice, the Landlord wrote: "Tenant is responsible for paying rent on the 1st day of each month in accordance with their rental agreement. Tenant was late paying rent in June, July and August 2021." The Landlord submitted a proof of service form confirming the service of the One Month Notice on the Tenant, as noted.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was deemed served with the second One Month Notice on August 31, 2021, five days after it was sent by registered mail.

Section 47 (5) of the Act states that if a tenant who has received a One Month Notice does not apply 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.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that she is conclusively presumed under section 47 (5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on September 30, 2021. As a result, I find that the Tenant was overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 (2) (b) of the Act.

As the effective date has passed and the Agent testified that rent for November 2021 has not been paid, the **Order of Possession** will therefore be **effective two days after service on the Tenant**, if necessary.

I also find that the Landlord is entitled to recovery of the **\$100.00** filing fee pursuant to section 72 of the Act, which the Landlord is authorized to retain from the Tenant's security deposit.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord is also awarded recovery of his **\$100.00** Application filing fee from the Tenant. Pursuant to section 72 of the Act, I authorize the Landlord to retain \$100.00 of the Tenant's security deposit in complete satisfaction with this award,

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: November 16, 2021

Residential Tenancy Branch