



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPC OPR MNR FF
Tenant: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 4, 2021.

Both parties attended the hearing and provided affirmed testimony. The Landlord stated that she served the Tenant, in person, with her application, Notice of Dispute Resolution Proceeding, and evidence on August 8, 2021. The Tenant could not recall what he received, and when, but was aware of the issues being sought. I find the Landlord provided a more compelling account of what was served, and when, and I find the Landlord sufficiently served the Tenant with her application, Notice of Dispute Resolution Proceeding, and evidence on August 8, 2021, the day it was personally given to him.

Subsequently, the Landlord filed an amendment with our office on September 8, 2021, seeking to add a request for an order of possession based off of a 10 Day Notice to End Tenancy for Unpaid Rent, and for a monetary order for the unpaid rent affiliated with that Notice. The Landlord stated she served this amendment to the Tenant in person, on October 20, 2021. The Tenant acknowledged getting this package but did not recall when, or what was in it. I find the Landlord sufficiently served the Tenant with this amendment, and additional evidence package on October 20, 2021, the same day it was personally given to him.

The Tenant stated he served his application, Notice of Dispute Resolution, and evidence to the Landlord by asking two of his friends to drop it off at the Landlord's house sometime in April. I informed the Tenant that this was not possible, given he did not file his application until August 2021. The Tenant responded by saying he doesn't know how and when these documents were served. The Landlord denies getting this

package. I find the Tenant failed to sufficiently establish that he served his application, Notice of Dispute Resolution and evidence, as required under the Act. I dismiss the Tenant's application, in full, with leave, although this does not extend any time limits under the Act.

Both parties were given a full opportunity to be heard, to present evidence and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters – Landlord's application - Amendment

First, I note that when the Landlord applied for this hearing, she indicated she is seeking an order of possession based off a 2 Month Notice to End Tenancy for Landlord's Use of the Property. As part of this application, she uploaded a copy of this related Notice, and I note it is clearly a 1 Month Notice to End Tenancy for Cause, dated January 30, 2021. Although the Landlord extended the effective date of the 1 Month Notice to over 2 months down the road, I find this is still a 1 Month Notice for Cause, not a 2 Month Notice to End Tenancy for Landlord's Use. The Landlord made an administrative error when applying for an order of possession based off the 1 Month Notice, as she mistakenly indicated she wanted an order of possession based off a 2 Month Notice.

The Tenant appears to understand that it was a 1 Month Notice, and that this was part of the Landlord's application. Neither party took any issue with the Landlord's application being amended to hear her request for an order of possession for the 1 Month Notice, rather than the 2 Month Notice she initially selected. It is clear the Landlord intended for her application to be based off the 1 Month Notice, as this was the Notice that was included with her application, and the Notice that was served to the Tenant in January 2021, as well as in the evidence package included with the Landlord's Notice of Dispute Resolution. I hereby amend the Landlord's application to reflect what both parties understood this application to be about, the 1 Month Notice to End Tenancy for Cause, issued January 30, 2021, with an effective date of April 5, 2021.

Preliminary and Procedural Matters – Landlord's application – Severing of Issues

The Landlord applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issue in the Landlord's application deals with whether or not the tenancy is ending by way of the 1 Month Notice to End Tenancy for Cause. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the Landlord's application with the exception of the following ground:

- An order of possession based on a 1-Month Notice to End Tenancy for Cause (the "1 Month Notice").

The Landlord is granted leave to reapply for any monetary compensation.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The Landlord explained that she served the Tenant with the 1 Month Notice on January 30, 2021. The Tenant acknowledged getting the Notice on that same day. The Tenant did not dispute the Notice, and appears to have initially planned on moving out by the effective date of the 1 Month Notice, April 5, 2021.

The Landlord provided a copy of the 1 Month Notice, and indicated it was issued for several reasons, including the destruction of her property, and safety issues. The Tenant did not move out by the effective date of the Notice, and the Landlord, after having failed conversations with the Tenant, applied for an order of possession for this 1 Month Notice on July 6, 2021.

The Tenant did not speak to any of the issues or complaints noted in the 1 Month Notice.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Landlord issued the Notice for several reasons, none of which were refuted by the Tenant.

Although the Tenant filed an application for other matters, the Tenant did not dispute the 1 Month Notice by filing an application for that issue.

The Tenant acknowledged getting the 1 Month Notice of January 30, 2021. I find the Tenant received the Notice that day.

The Tenant had 10 days after receipt of this Notice, until February 9, 2021, to dispute it with our office, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

The Tenant is conclusively presumed to have accepted the end of the tenancy by not filing an application to dispute the Notice. Based on this, and the Landlord's testimony supporting why it was issued, I find the Landlord is entitled to an order of possession, which will be effective **two days after service** on the Tenant.

As the Landlord's application was successful, and pursuant to section 72 of the *Act* I grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**. I **authorize** the Landlord to retain \$100.00 from the Tenant's \$250.00 security deposit in full satisfaction of the recovery of the cost of the filing fee, which I find leaves a security deposit balance of \$150.00 which must be dealt with in accordance with the *Act*.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served 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 and be 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: November 04, 2021

Residential Tenancy Branch