



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, OLC, AAT, LAT**

Introduction

The hearing was convened as a result of the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a One Month Notice to End Tenancy for Cause dated June 24, 2021 ("1 Month Notice") pursuant to section 47 of the Act;
- an order that the Landlord comply with the Act, *Residential Tenancy Regulations* and/or tenancy agreement pursuant to section 62 of the Act;
- an order to allow access to or from the rental unit or site for the Tenant or the Tenant's guests pursuant to section 32 and 70 of the Act; and
- an order to allow the Tenant to change the locks to the rental unit pursuant to section 31 of the Act.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:36 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agent ("DB") and the caretaker of the residential premises ("SD") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that DB, SD and I were the only ones who had called into this teleconference.

DB acknowledged that the Landlord was served in-person by the Tenant with the Notice of Dispute Resolution Proceeding and Tenant's evidence ("NODP Package") on August 16, 2021. As DB acknowledged receipt of the NODP Package by the Landlord, I find that the Landlord was served in accordance with the provisions of sections 88 and 89 of the Act.

DB testified the Landlord served the Tenant with its evidence by registered mail on September 22, 2021. DB submitted the registered mail receipt and tracking numbers to corroborate service of the Landlord's evidence on the Tenant. I find the Tenant was served with the Landlord's evidence in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* ("RoP") states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is on the person making the application. However, in some situations the arbitrator may determine the onus is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though this is the Tenant's application, the Landlord bears the burden to prove it is more likely than not that the 1 Month Notice is valid. The Landlord must meet this burden even if the Tenant does not attend the hearing.

Rules 7.3 and 7.4 of the RoP state:

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 re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

In the absence of any evidence or submissions from the Tenant, I order the Tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the Act, if I dismiss the Tenant's application to cancel the 1 Month Notice, the Landlord is entitled to an Order of Possession if the 1 Month Notice meets the requirements of section 52 of the Act.

Issue

- 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 Tenant's application and my findings are set out below.

The parties entered into a month-to-month tenancy agreement starting September 1, 2017. Monthly rent, which is based on 30% of the Tenant's gross income, is currently

\$466.00. At the start of the tenancy the Tenant provided the Landlord with a security deposit of \$400.00. DB confirmed the Landlord continues to hold the security deposit in trust for the Tenant. DB also confirmed that, as of the date of the hearing, the Tenant is not in rental arrears.

DB testified the 1 Month Notice was served by attaching it to the Tenant's door on June 24, 2021. DB submitted a signed Proof of Service on Form RTB-34 to corroborate her testimony that the 1 Month Notice was served on the Tenant. I find the 1 Month Notice was served on the Tenant in accordance with section 88 of the Act and, pursuant to section 90, the Tenant was deemed to have received the 1 Month Notice on June 27, 2021.

The three causes stated on the 1 Month Notice for ending the tenancy are the Tenant or person permitted on the property by the Tenant has:

- (a) seriously jeopardized the health or safety or lawful right of another occupant or the Landlord;
- (b) put the landlord's property at significant risk; and
- (c) caused extraordinary damage to the unit/site or property/park.

The 1 Month Notice provided the following details:

[The tenant] has not maintained reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

A unit inspection was done on June 23, 2021, the unit was found to be in an unfit condition. There was no room to walk in the entrance or living room without stepping on items. The kitchen cabinet door was off and a drawer front is missing, the vinyl floor and carpets are filthy. Two of the bedrooms are completely filled with items, access is impossible. The third bedroom is disheveled. The yard is in the same condition. The storage room door is off and leaning against the wall.

DB testified that rental unit was completely refurbished before the Tenant moved into the unit on September 1, 2017. DB and SD both stated that since the Tenant moved into the rental unit, the Tenant has not maintained reasonable health, cleanliness and sanitary standards in the rental unit and the backyard of the rental unit. DB stated that the Landlord arranged for monthly inspections of the rental unit but the Tenant was very

combative and often did not allow access to the rental unit. DB testified a social worker attempted to provide support to the Tenant and encourage the cooperation of the Tenant to clean up the rental unit but the Tenant was unable or unwilling to cooperate. DB stated the attempts to do regular inspections stopped as a result of the COVID-19 pandemic.

DB stated that an inspection was eventually performed on the rental unit on June 23, 2021. DB stated that the inspection revealed that the condition of the rental unit had deteriorated since the inspections performed prior to the onset of COVID-19. DB submitted a total of 18 photos of the interior of the rental unit taken during the inspection on June 23, 2021. Those pictures displayed:

- filthy carpets
- a bedroom door off its hinges
- a kitchen cabinet door off its hinges
- a bathtub partially filled with dirty water
- counters and tables covered with sundry items including beverage containers
- loose articles, clothing and storage containers strewn on the floors throughout the rental unit

DB also testified the Tenant has not maintained the backyard of the rental unit. DB stated that during the June 23, 2021 inspection, she and SD found the Tenant had left kitchen refuse, milk jugs, empty beverage containers and take-out food boxes in the back yard. DB stated that the residential premises are located near bear habitat. DB stated the containers and packaging that have come in contact with food products are an attractant to bears. DB submitted a copy of a warning letter dated June 30, 2021 that had been given to the Tenant in which DB stated:

Further to our meeting this morning when you were asked to remove all items in your backyard to prevent bears coming onto the property, a young bear was spotted at your backyard fence shortly after and came into the complex.

I have been informed by neighbours that bears in your back yard is a regular occurrence.

The condition of your backyard with the milk jugs and take out food containers is an attractant for bears. This jeopardizes not only your safety but that of all your

neighbors' safety. Bears have been known to enter homes through open patio doors.

The yard must be cleaned immediately of all food and related items.

DB submitted a photo taken on May 30, 2021 that shows miscellaneous items strewn around the patio of the rental unit, including take-out food containers and empty milk jugs. DB and SD testified that, after the Tenant was served with the warning letter on June 30, 2021, several visual inspections were performed from outside the back yard of the rental unit. Those inspections revealed the Tenant had only partially complied with the request for removal of food related refuse from the backyard. DB submitted a photo taken on June 7, 2021 that showed some of the food related containers had been removed since the photo taken on June 30, 2021 but the take-out food boxes remained.

DB submitted that the Tenant's failure to maintain the backyard of the rental unit free from food related items was attracting bears onto the residential premises and that this was seriously jeopardizing the health and safety of other occupants of the residential premises.

Analysis

The three causes listed by the Landlord for ending the tenancy on the 1 Month Notice for ending the tenancy were the tenant or person permitted on the property by the tenant has:

- (a) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- (b) put the landlord's property at significant risk; and
- (c) caused extraordinary damage to the unit/site or property/park.

Section 47(1) of the Act states in part:

- 47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
[...]

- (d) the tenant or a person permitted on the residential property by the tenant has
[...]
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
[...]

The undisputed testimony of DB and SD was the Tenant was requested in writing on June 30, 2021 to remove all food and related item from the backyard of the rental unit. However, an inspection by DB and SD on June 7, 2021 revealed that the Tenant had not fully complied with this request and food delivery boxes remained. The undisputed testimony of DB was the residential premises are in an area where bears frequently roam in search of food. The undisputed testimony of DB and SD was that bears have been sighted in the backyard of the rental unit by other occupants of the residential premises. DB stated that the presence of roaming bears scavenging for food and food related packaging in the backyard of the Tenant's rental unit poses a risk to the other occupants of the residential premises. I find the Tenant's failure to comply with the request of the Landlord to keep the backyard of the rental unit free from food related items has seriously jeopardized the health and safety of other occupants of the residential premises.

Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, cause for ending the tenancy pursuant to subsection 47(1)(d)(ii) of the Act. As I have found cause under subsection 47(1)(d)(ii), it is unnecessary for me to consider whether there is cause to end the tenancy under subsections 47(1)(d)(iii) or 47(1)(f) of the Act.

I have reviewed the 1 Month Notice and find that it complies with form and content requirements of section 52 of the Act. As such, I find the 1 Month Notice is valid.

Section 55(1) of the Act states:

Order of possession for the landlord

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.

As I have found the 1 Month Notice complies with section 52 of the Act, I grant the Landlord an Order of Possession effective two days after the Landlord serves this decision and attached order on the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service of this Order on the Tenant. Should the Tenant 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: November 26, 2021

Residential Tenancy Branch