



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NANAIMO AFFORDABLE HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on July 30, 2021, wherein the Landlord sought an Order of Possession based on an undisputed 1 Month Notice to End Tenancy for Cause issued on July 30, 2021 (the "Notice") as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on November 30, 2021. Only the Landlord's Representatives, J.R., J.D. and G.B., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:11 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. R.R. testified that they served the Tenant with the Notice of Hearing and the Application on August 19, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of August 24, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Representatives and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began November 7, 2019. The rent is subsidized and the Tenant's portion is \$375.00. The Tenant paid a \$400.00 security deposit. The tenancy agreement also included specific clauses regarding tenants conduct which were identified as material terms to the contract.

The Landlord issued the Notice on July 30, 2021. The reasons the Landlord sought to end the tenancy were due to allegations the Tenant breached a material term of the tenancy. The Landlord attached a three page document to the Notice setting out the concerns and allegations relating to the Tenant's breaches. The reasons articulated by the Landlord relate to serious allegations that the Tenant disrupted other tenants by being violent, sexually inappropriate, and destroying the Landlord's property. J.R. confirmed that the three pages were also served on the Tenant on July 30, 2021 when the Notice was posted to the rental unit door.

The Notice informed the Tenant he had 10 days in which to make an Application to dispute the Notice. J.R. confirmed that the Tenant failed to make such an application within the 10 days nor at any time following service of the Notice.

Analysis

The Landlord seeks to end the tenancy for Cause pursuant to section 47 of the *Act*, which reads as follows.

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

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (d)the tenant or a person permitted on the residential property by the tenant has
 - (i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has caused or is likely to cause damage to the landlord's property,
 - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(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.

I accept the Landlord's Representative's testimony that the Tenant was served the Notice on July 30, 2021 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later, such that I find the Tenant was served as of August 2, 2021.

The Notice informed the Tenant that he had ten days in which to apply to dispute the Notice; as such, he had until August 12, 2021. The evidence before me confirms the Tenant failed to make such an Application. As section 47(5) provides a tenant who is served a notice pursuant to section 47 and does not apply to dispute the notice is conclusively presumed to accept the end of the tenancy and must move out. Accordingly, I find this tenancy has ended.

I also find that the Landlord has provided sufficient evidence to support a finding that this tenancy should end for cause. The evidence provided by the Landlord indicates the Tenant has unreasonably disturbed others at the rental building and in doing so has breached section 23 of the tenancy agreement regarding tenant's conduct. I find that these clauses are material terms to the contract and I find the Tenant's breach of those clauses to be grounds to end this tenancy.

For these reasons I find the Landlord is entitled to an Order of Possession. This Order must be served on the Tenant and will be effective two days after service.

As the Landlord has been substantially successful, they are also entitled to recovery of the \$100.00 filing fee. I authorize the Landlord to retain \$100.00 from the Tenant's \$400.00 security deposit. The balance of the Tenant's deposit must be held in trust by the Landlord and dealt with in accordance with section 38 of the *Act*.

Conclusion

The Tenant failed to apply to dispute the Notice and is conclusively presumed to accept the end of the tenancy. The Landlord has also provided sufficient evidence to support a finding that the Tenant breached a material term of the tenancy agreement such that the tenancy must end. The Landlord is entitled to an Order of Possession. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

The Landlord is also entitled to recover the filing fee and may retain \$100.00 from the Tenant's security deposit as recovery of this sum.

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: December 1, 2021

Residential Tenancy Branch