



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rhome Property Management (a BC INC.) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On August 12, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord’s Agents (the “Landlord”), the Tenant and his interpreter/advocate (the “Tenant”) attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties agreed that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding and related evidence packages. The Tenant acknowledged that he submitted his evidence package to the Residential Tenancy Branch on the day of the hearing and did not serve it to the Landlord. The Landlord stated that the Tenant’s evidence package was not likely relevant and consented to admitting the evidence. As such, I find that the evidence before me is admissible for this hearing.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 47 and 55 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on April 1, 2021. The rent is \$1,650.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$825.00.

Both parties agreed to the following terms of the One Month Notice to End Tenancy for Cause, dated June 29, 2021 (the "One Month Notice"):

The One Month Notice was delivered, in person, to the Tenant on June 30, 2021. The One Month Notice had an effective move out date of July 31, 2021. The reasons for the issuance of the One Month Notice were noted on the second page of the notice and stated the following:

- Tenant or a person permitted on the property has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Breach of a material term of the Tenancy Agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord submitted documentary evidence to support their testimony that the Tenant has behaved in an inappropriate manner that has unreasonably disturbed both other occupants and the Landlord and has also breached the material term of no smoking on the residential property.

The Landlord referenced the following:

- April 19, 2021 – statement from the building Handyman about the Tenant's rude behaviour during an inspection in the rental unit. The Handyman indicated that he did not feel safe around the Tenant and would quit his job if he was forced to work in the rental unit.
- April 29, 2021 – Incident report from the Caretaker. The Caretaker testified and was embarrassed to speak about the Tenant's lewd and bullying behaviour. In

the incident report, she noted that the Tenant should receive a letter that this kind of behaviour is not allowed.

- May 10, 2021 - Warning Letter sent to the Tenant about offensive language, drunken and lewd behaviour towards management staff. The letter included a warning that continued breaches may result in the end of the tenancy.
- June 23, 2021 – Email complaint from an occupant in the residential property to the Landlord about the Tenant's behaviour. The occupant asked the letter to be anonymized as they feared retaliation from the Tenant. The occupant gave examples of bullying behaviour, smoking, and aggressive behaviour by the Tenant during the tenancy.

The Landlord has acknowledged that the Tenant has been providing monthly payments towards the use and occupancy of the rental unit. The Landlord requested an Order of Possession for the rental unit for January 31, 2022.

The Tenant admitted that they did not apply to dispute the One Month Notice. The Tenant, and his advocate, stated that the Tenant had been going through an emotionally difficult time for the first few months of the tenancy as a result of a death in the family. The Tenant also stated that because of his poor English, he did not understand that he had a time limit to dispute the One Month Notice.

The Tenant acknowledged that he does smoke but has been smoking e-cigarettes. The Tenant stated that he burns incense and doesn't believe the Landlord is accurate with the various dates that have been submitted about the Tenant smoking.

The Tenant stated that he has made some mistakes but has since recovered and has not been causing any problems of late. The Tenant stated that he would like to stay in the rental unit and continue the tenancy.

The Tenant was asked if they had completed their submissions regarding the issues brought forward by the Landlord and the Tenant confirmed that they had.

Analysis

Section 47(4) of the Act states that a tenant may dispute a Notice to End Tenancy by making an Application for Dispute Resolution within 10 days after the date the tenant receives the Notice. Section 47(5) of the Act states that if a tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), 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.

In this case, the Tenant admitted that he did not dispute the One Month Notice. If I were to strictly follow section 47(5), I would find, based on the evidence before me, that the tenant is conclusively presumed to have accepted that the tenancy ended on July 31, 2021, pursuant to the One Month Notice.

The Tenant submitted that he did not dispute the One Month Notice as he did not understand English very well. Giving the Tenant the benefit of the doubt, and instead of ending the tenancy based on conclusive presumption, I will review the reasons for and validity of the One Month Notice.

The Landlord has served the One Month Notice on the Tenant based on sections 47(1)(d) and 47(1)(h) of the Act. When I consider the validity of the reasons the Landlord has for ending the tenancy, I must determine if the Landlord has sufficient evidence to prove that the Tenant's actions significantly interfered with or unreasonably disturbed another occupant or the Landlord, or seriously jeopardized the health and safety or a lawful right of another occupant. Furthermore, in relation to section 47(1)(h), that the Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the Landlord gives written notice to do so. The standard of proof is based on the balance of probabilities. If I find that any one of the reasons set out in the One Month Notice are valid and that the Notice complies with section 52 of the Act, I must grant the Landlord an Order of Possession for the rental unit in accordance with section 55 of the Act.

The Landlord has submitted documentary evidence and testified that the Tenant's abusive behaviour towards both the Handyman and the Caretaker amounts to unreasonably disturbing the Landlord. Furthermore, the Landlord has submitted evidence from an occupant of the residential property who also provided a written statement about several incidences where the Tenant bullied and unreasonably disturbed her. Based on the evidence in front of me and on a balance of probabilities, I find that the Landlord has established that the Tenant did disturb another occupant and the Landlord on several occasions, contrary to section 47(1)(d) of the Act. As such, I find that at least one of the reasons set out in the One Month Notice are valid.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form. I find the One Month Notice, dated June 29, 2021, complies with the requirements set out in Section 52.

I have found that the One Month Notice is compliant with the Act and for this reason and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession for the effective date of January 31, 2022.

I find that the Landlord's Application has merit, and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

As such, I authorize the Landlord to deduct \$100.00 from the security deposit.

Conclusion

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on January 31, 2022 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: December 15, 2021

Residential Tenancy Branch