



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DCPM as agent for island apartments GP
ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47.

The agents MG and EB attended for the landlord (“the landlord”). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 25 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord testified that the tenant left a copy of the Notice of Hearing at the landlord’s office. The landlord did not receive copies of the tenant’s evidence. The landlord submitted written evidence copies of which were provided to the tenant.

The landlord requested to proceed with the hearing.

Order of Possession

I informed the landlord that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the Act, I was required under section 55 of the Act to grant an order of possession in favour of the landlord.

Section 55 states as follows:

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.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. A copy of the tenancy agreement was submitted. The landlord submitted a comprehensive, extensive evidence package. They testified to the background of the tenancy and the present circumstances.

The landlord testified that the tenancy began on November 1, 2020 for a fixed term of one year. The tenancy continued monthly.

Rent is \$2,050.00 and the tenant provided a security deposit of \$1,025.00 which the landlord holds. The agreement includes a provision that the tenant is not permitted to have a dog.

The landlord stated there were 16 complaints regarding the tenant. Copies of the incident reports and caution notices were submitted.

Many of the complaints involve the tenant's dog which they had in violation of the agreement. The landlord requested a pet deposit from the tenant and the tenant refused to pay. Other residents complained of hearing the dog bark for hours at a time and said the dog was frequently left alone making noise and crying late into the night.

Other complaints involved multiple guests coming and going to the unit and unattended loud, smoking minors.

The landlord testified they gave eight written letters of warning to the tenant to no avail. The persistent noise and disturbance continued unabated.

The landlord testified they issued a One Month Notice. A copy was submitted which is in the RTB form. The Notice was dated and served by posting on the tenant's door on August 3, 2021 thereby effecting service three days later, that is, on August 6, 2021. A supporting Proof of Service document in the RTB form was submitted.

The effective date of the Two Month Notice was September 6, 2021, corrected by me to September 30, 2021.

The causes listed in the Notice were the following:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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 One Month Notice included a term that the tenant had to right to dispute the Notice within 10 days, that is, by August 16, 2021.

The tenant filed an Application to cancel the Notice on August 17, 2021 outside the ten-day period. The tenant has failed to attend the hearing of the tenant's application.

The tenant has not vacated the unit. The landlord requested an Order of Possession.

Analysis

While I have turned my mind to the admissible documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Rule 7.3 of the Rules of Procedure provides as follows:

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 reapply.

As the applicant did not attend the hearing and in the absence of any evidence or submissions on behalf of the applicant, I order the tenant's application dismissed without leave to reapply.

As the tenant has failed to appear at this hearing or submit any testimony or evidence, I dismiss the tenant's request to cancel the One Month Notice as well as the other relief requested by the tenant.

Pursuant to section 55(1), the director **must** grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 and the tenant's application is dismissed.

I determine the landlord's Notice complies with section 52. I have dismissed the tenant's application. I therefore find the landlord is entitled to an order of possession.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant the landlord an Order of Possession which is effective two days after service on the tenant.

The landlord must serve this order 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 enforceable 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: December 22, 2021

Residential Tenancy Branch