



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gilic Developments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, RR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 13, 2021, under the *Residential Tenancy Act* (the Act), seeking;

- Cancellation of a One Month Notice to End Tenancy for Landlord's Use of Property (the One Month Notice);
- An extension to the time limit set out under section 47(4) for disputing the One Month Notice, pursuant to section 66(1) of the Act;
- A rent reduction for repairs services, or facilities agreed upon but not provided; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on January 25, 2022, and was attended by the agent for the Landlord M.P. (the Agent), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over myself and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The *Act* and the Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and the documentary evidence intended to be relied upon by the applicant at the hearing. Although the Agent stated that they had found the Notice of Dispute Resolution Proceeding Package, which included the above noted documents, by accident, as it was abandoned by the Tenant in a storage area rather than properly served on the Landlord, it was none the less received by the Landlord with sufficient time to prepare for and attend the hearing. The Agent stated that as they had appeared at the hearing on time and were ready to proceed, they wished for the hearing to continue as scheduled, despite the unorthodox way they received the Notice of Dispute Resolution Proceeding Package from the Tenant, as the landlord wished to obtain an Order of Possession.

Section 71(2)(b) of the *Act* states that the director may order that a document has been sufficiently served for the purposes of the *Act* on a date the director specifies and section 71(2)(c) states that the director may also order that a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the *Act*. The Agent stated that they had received the Notice of Dispute Resolution Proceeding Package and evidence from the Tenant, albeit in an unorthodox way, with sufficient time to prepare for and attend the hearing, and therefore they wished for the hearing to proceed. As a result, I find that there is no breach of procedural fairness or the principles of natural justice in proceeding. As there is no prejudice to the Landlord in doing so, I therefore order that it was sufficiently served on the Landlord for the purposes of the *Act*. Although the Tenant did not appear, I find there is no prejudice to the Tenant is proceeding with the hearing as scheduled, as the hearing was scheduled at the Tenant's request as a result of the Tenant's own Application, and I am satisfied by Residential Tenancy Branch (Branch) records that the Tenant was provided with a copy of the Notice of Dispute Resolution Proceeding Package by the Branch on September 22, 2021.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Agent and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on January 25, 2022. Rule 7.3 of the Rules of Procedure states that 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. Although the line remained open for 28 minutes, neither the Tenant nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration. As a result, and pursuant to

rule 7.3 of the Rules of Procedure, I dismiss the Tenants' Application without leave to reapply.

Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at email address provided for the Landlord in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on May 1, 2021, and was set to end on April 30, 2022, after which time the tenancy could continue on a month-to-month basis. The tenancy agreement states that rent in the amount of \$1,825.00 is due on the first day of each month and was signed on April 18, 2021. At the hearing the Agent confirmed that these terms are correct.

The Agent stated that the One Month Notice was posted to the door of the rental unit on August 16, 2021, and that another agent for the Landlord verified that it was gone from the door that same day. As a result, the Agent stated that they believe the Tenant received it off their door on August 16, 2021. In the Application the tenant indicated that the One Month Notice was posted to their door on August 16, 2021.

The One Month Notice in the documentary evidence before me is in writing on the current version of the form, is signed and dated August 16, 2021, has an effective date of September 14, 2021, and states that the reason for ending the tenancy is because the tenant is repeatedly late paying rent, the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and the tenant

has breached a material term of the tenancy agreement. Further details are provided in the details of cause section and all 4 pages of the One Month Notice are before me.

The Agent stated that the Tenant did not dispute the One Month Notice in time, and the Landlord should therefore be entitled to an Order of Possession.

Neither the Tenant nor an agent acting on the Tenant's behalf attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the tenancy agreement and the Agents affirmed and undisputed testimony, I am satisfied that a tenancy to which the *Act* applies exists between the parties. Based on the statement by the Tenant in the Application and the uncontested and affirmed testimony of the Agent, I find on a balance of probabilities that the Tenant was served with the One Month Notice August 16, 2021, the same date it was posted to the door of the rental unit. In any event, I find that the Tenant would have been deemed served on August 19, 2021, three days after it was posted to the door of the rental unit, pursuant to section 90(c) of the *Act*, if it had not already been received at an earlier date.

Section 47(5) of the *Act* states that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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. Although the One Month Notice states that the effective date of the notice is September 14, 2021, given the dates I have found that the One Month Notice was either served or deemed served and the date upon which rent is due under the tenancy agreement, I find that this date does not comply with the minimum notice period required under section 47(2) of the *Act*. As a result, I find that the effective date of the One Month Notice is automatically corrected to September 30, 2021, pursuant to section 53 of the *Act*.

Although the Tenant disputed the One Month Notice, they did not do so until September 13, 2021. This date is more than 10 days after both the date I find that the Tenant was served with the One Month Notice (August 16, 2021), and the latest date the Tenant could have been deemed served if they did not receive it off their door at an earlier date (August 19, 2021). As a result, I find that the Tenant did not dispute the One Month Notice within the legislative time period for doing so set out under section 47(4) of the *Act*. Although the Tenant also sought an extension to the time limit set out under

section 47(4) of the *Act* for disputing the One Month Notice, pursuant to section 66(1) of the *Act*, they did not appear at the hearing to present any evidence or testimony regarding what exceptional circumstances, if any, prevented them from filing the Application on time. As a result, I find that no such exceptional circumstances existed and that the Tenant is therefore conclusively presumed under section 47(5) of the *Act* to have accepted the One Month Notice. I find that the tenancy therefore ended on September 30, 2021, if it was not ended under the *Act* by one or both of the parties at an earlier date.

The Agent stated that the Tenant is still in the rental unit. As the tenancy ended on September 30, 2021, by way of the One Month Notice, if not earlier ended by one or both of the parties, I find that the Tenant is overholding the rental unit. As I am satisfied that the One Month Notice complies with section 52 of the *Act*, I therefore grant the Landlord an Order of Possession pursuant to section 55(1) of the *Act*. As the corrected effective date has passed, the Order of Possession will therefore be effective two days after service on the Tenant.

Conclusion

The Tenant's Application is dismissed in its entirety, without leave to reapply.

Pursuant to section 55(1) of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Dated: January 25, 2022

Residential Tenancy Branch