



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Manor Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on September 18, 2021, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- An order for the Landlord to comply with the Act, regulations, or tenancy agreement.

The hearing was convened by telephone conference call at 9:30 A.M. (Pacific Time) on February 1, 2022, and was attended by D.R. an agent for the Landlord (the Agent), who provided affirmed testimony. The Tenant did not attend. The Notice of Dispute Resolution Proceeding states the date and time of the hearing, that the hearing will be conducted by telephone conference call, and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no more than five minutes before the start of the hearing. I confirmed that the details shown in the Notice of Dispute Resolution Proceeding were correct and I note that the Agent was able to attend the hearing promptly using the information contained in the Notice of Dispute Resolution Proceeding they acknowledged was received by the Landlord from the Tenant. Further to this, Residential Tenancy Branch records show that the Residential Tenancy Branch called the Tenant yesterday, on January 31, 2022, and the Tenant confirmed that the hearing was still required.

The Agent attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 20

minutes until 9:50 A.M., neither the Tenant nor an agent acting on their behalf appeared to provide evidence or testimony for my consideration.

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. 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. As neither the Tenant nor an agent acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application seeking an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, without leave to reapply.

Although the Tenant sought cancellation of the One Month Notice, and did not appear at the hearing, when a tenant disputes the validity of a notice to end tenancy, the burden falls to the landlord to establish that they have grounds to end the tenancy under the *Act*. As a result, the hearing proceeded as scheduled on the matter of validity of the One Month Notice.

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

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

Preliminary Matters

At the hearing the Agent stated that the Landlord is a corporation and provided me with the name. The name given by the Agent matches the name set out for the Landlord in the tenancy agreement, which also names another agent for the Landlord neither present at the hearing nor named in the Application.

I amended the Application to correctly name the Landlord as the respondent, rather than one of their agents.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy commenced on May 23, 2020, and was set to end on August 1, 2021, after which time it could continue month-to-month. The tenancy agreement states that rent in the amount of \$1,100.00 is due on the first day of each month, that there is to be no noise after 10:00 P.M. and before 7:00 A.M. and that there is to be no large gatherings.

The Agent stated that there have been countless complaints from other occupants of the building, who are also tenants of the Landlord, regarding the Tenant and persons the Tenant permits onto the property and into the rental unit. The Agent provided details on three complaints received shortly before the issuance of the One Month Notice. The complaints were received from other occupants of the building on August 5, 2021, September 5, 2021, and September 12, 2021. There was also another undated written complaint. In these written complaints the Agent stated that the other occupants of the building reported feeling unsafe due to drug related activity by the Tenant and persons permitted on the property by the Tenant, were tired of continuous disturbances by police attending or monitoring the property due to the Tenant's actions and the actions of persons the Tenant permits onto the property, and were tired of continues noise disturbances from the Tenants rental unit during the day and throughout the night. The Agent stated that several tenants also complained about the Tenant and their guest's bringing gasoline into the rental unit, which is a significant fire safety risk, and the Tenant's guests attempting to burn down the Tenant's door and peep hole.

The Agent stated that the Tenant has permitted a minimum of three additional and unauthorised persons to occupy the rental unit with them, which is unreasonable, as it is a one bedroom rental unit. The Agent also stated that the Tenant or persons permitted on the property by the Tenant have caused extraordinary damage by attempting to burn the Tenant's door down, as the Tenants door was significantly damaged by fire.

The Agent stated that as a result of the above, the Landlord had an agent serve the One Month Notice to the Tenant personally on September 9, 2021. A Proof of Service document in the documentary evidence before me from the Tenant states that the Tenant was personally served on September 9, 2021, and appears to show the Tenants signature as acknowledgement of personal service on that date.

The One Month Notice in the documentary evidence before me from the Tenant is on the current version of the form, is in writing, is signed and dated by an agent for the Landlord on September 8, 2021, has an effective date of October 31, 2021, and lists the following grounds for ending the tenancy:

- there are an unreasonable number of occupants in a rental unit;
- 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,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - has caused or is likely to cause damage to the landlord's property,
 - 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
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.

In the details of cause section of the form it states that countless complaints have been received against the Tenant, police files have been made, and that the Tenant is a danger and highly disruptive to fellow tenants.

The Agent stated that as of yesterday, the Tenant was still residing in the rental unit to the best of their knowledge, and that the Landlord wished to receive an Order of Possession for the rental unit as soon as possible.

No one attended the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Based on the Agent's affirmed and undisputed testimony, and the tenancy agreement submitted by the Tenant, I am satisfied that a tenancy to which the *Act* applies exists between the Landlord and the Tenant, the terms of which are set out in the tenancy agreement before me.

Based on the Proof of Service document submitted by the Tenant, and the statement made by the Tenant in their Application that they received the One Month Notice in person on September 9, 2021, I am satisfied that they were personally served on September 9, 2021. Residential Tenancy Branch records show that the Tenant filed their Application seeking cancellation of the One Month Notice on September 18, 2021, which I find falls within the dispute period set out under section 47(4) of the *Act*. As a result, I find that conclusive presumption under section 47(5) of the *Act* does not apply.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if:

- there are an unreasonable number of occupants in a rental unit;
- 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;
- the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that 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;

- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

Based on the Agent's affirmed and undisputed testimony, I am satisfied that the Landlord has grounds to end the tenancy for the reasons set out at the hearing and in the One Month Notice, which I find are also grounds to end the tenancy under section 47 of the *Act*, as set out above. As a result, I dismiss the Tenant's Application seeking cancellation of the One Month Notice without leave to reapply.

As I am satisfied that the One Month Notice in the documentary evidence before me complies with section 52 of the *Act*, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit, pursuant to sections 55(1) of the *Act*. As the effective date of the One Month Notice has passed, and given the severity of the grounds for ending the tenancy set out by the Agent at the hearing and in the One Month Notice, I therefore grant the Landlord an Order of Possession for the rental unit effective two days after service on the Tenant, pursuant to section 68(2)(a) of the *Act*.

Conclusion

The Tenant's Application is dismissed, in its entirety, without leave to reapply. Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 1, 2022

Residential Tenancy Branch