



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

JM and DD ("landlord") represented the landlord in this hearing. While the landlord's agents attended the hearing by way of conference call, the tenant did not. I waited until 9:43 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 am. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

The landlord's agents were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord's agents confirmed that they understood.

This hearing was originally scheduled for February 17, 2022 at 9:30 a.m. The landlord's agents, JM and DD, testified that they had attended the scheduled hearing at that date and time, but the tenant did not despite the parties waiting for at least 10 minutes with an RTB staff member present. The hearing was re-scheduled for March 1, 2022 at 9:30am due to the lack of availability of an arbitrator to conduct the hearing on February 17, 2022.

A new Notice of Hearing was provided to the landlord, and which was also sent to the tenant's address. The landlord's agents also provided the tenant with a copy by posting the new Notice of Hearing on the tenant's door on the date that they received the new Notice. I am satisfied that the tenant was served with the new Notice of Hearing.

The landlord's agents confirmed service of the tenant's application. In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's application. The landlord provided a signed proof of service to show that the tenant was personally served with the landlord's evidentiary materials on February 9, 2022. I find the tenant duly served with these materials in accordance with section 88 of the *Act*.

The landlord provided proof of service in their evidentiary materials to show that the tenant was served with a 1 Month Notice dated September 27, 2021, by posting the Notice on the tenant's door. I am satisfied that the tenant was served with the 1 Month Notice in accordance with section 88 of the *Act*.

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 re-apply

As the tenant failed to attend both the original scheduled hearing on February 17, 2022, or the re-scheduled hearing on March 1, 2022, I dismiss the tenant's entire application without leave to reapply.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This month-to-month tenancy began on October 14, 2017. The tenant's rent of \$620.00 is subsidized, and the tenant's portion is currently \$320.00 per month. The landlord had collected a pet damage and security deposit of \$300.00 per deposit. The landlord's agents confirmed in the hearing that the tenant is still currently still residing at the rental suite, and they requested an Order of Possession pursuant to the 1 Month Notice.

The landlord served the tenant with a 1 Month Notice on September 27, 2021 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so.

The tenant was served with the 1 Month Notice due to the ongoing issues with the tenant's behaviour. The landlord's agents provided written evidence as well as sworn testimony to show that the tenant has failed to maintain his rental unit in a condition that meets reasonable health, cleanliness, and sanitary standards. The landlord's agents testified that the tenant also continues to dispose of kitty litter down the toilet, which has caused a significant impact on the landlord and other tenants in the building. The landlord testified that there are 84 other units in the building, and the tenant's actions have negatively impacted the other tenants' ability to enjoy their rental units. The landlord testified that the tenant residing in the unit below had to be re-located to a different rental unit, and the rental unit remains vacant. The landlord testified that the tenant has harassed that tenant, and the tenant fears for their safety.

The landlord testified that the tenant has been provided with ample opportunity to address these issues, but has failed to do so. The landlord also submits that the tenant's behaviour has impacted the landlord financially, and they have no choice but to end this tenancy.

Analysis

Section 55(1) of the *Act* reads 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.

A copy of the 1 Month Notice was submitted by the tenants for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the

Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, October 31, 2021. I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's entire application without leave to reapply. I find that the landlord's 1 Month Notice is valid and effective as of October 31, 2021.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) 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: March 01, 2022

Residential Tenancy Branch