



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC-MT**

Introduction

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. More time to dispute the notice pursuant to Section 66 of the Act.

The hearing was conducted via teleconference. The Manager and Attorney for his mother, SG, two Witnesses, KS and TJ, and the Tenant, TH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on October 20, 2021 by posting the notice on the Tenant's door. The Tenant confirmed receipt of the posted notice. I find the One Month Notice was deemed served on October 23, 2021 according to Sections 88(g) and 90(c) of the Act.

The Tenant served the Notice of Dispute Resolution Proceeding package to the Landlord via Canada Post registered mail on November 17, 2021 (the "NoDRP package"). The parties referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of

this decision. The Landlord confirmed receipt of the NoDRP package on November 24, 2021. I find that the Landlord was served with the NoDRP package on November 24, 2021, in accordance with Section 89(1)(c) of the Act.

Preliminary Matter

The Tenant testified that he applied to an assistance program to help him dispute this file, therefore he sought more time to apply for dispute resolution. The One Month Notice was deemed served on October 23, 2021 to the Tenant. The Tenant had until November 2, 2021 to apply for dispute resolution. The Tenant applied on November 16, 2021. Pursuant to RTB Policy Guideline #36, an Arbitrator can extend a time limit established by the Act only in **exceptional circumstances**.

The Tenant submitted that he applied to an assistance program to help him dispute this file; however, his reasons given in the hearing were because the Landlord had applied for an expedited hearing to end this tenancy on November 24, 2021. The File number for the expedited file is listed on the cover sheet of this decision. Policy Guideline #36 states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

The Tenant provided no reasons to me to consider whether or not to allow an extension to apply for dispute resolution on this file. The Tenant filed late, and I dismiss his application filing for more time; and accordingly dismiss the Tenant's claim to cancel the One Month Notice without leave to re-apply.

Issue to be Decided

1. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this periodic tenancy began on July 1, 2015. Monthly rent is \$969.00 payable on the first day of each month. A security deposit of \$425.00 was collected at the start of the tenancy and is still held by the Landlord. The Tenant lived in a different unit at the start of the tenancy, and paid a \$450.00 security deposit. When the Tenant moved to the current unit, his security deposit changed to \$425.00, and, the Tenant confirmed, the extra \$25.00 was applied to his first month's rent in the second unit.

The Landlord stated on the One Month Notice the reason why he was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The effective date of the One Month Notice was December 1, 2021. Further details in the One Month Notice were:

The building is a 4 unit building. In addition, I own the building next door which is an identical 4 unit building. All in all, there are 7 tenants occupying the two buildings, and I occupy the eighth unit in place of my mother, as her power of attorney.

Though all the tenants have complained about [the Tenant], three tenants have brought to my attention incredibly disturbing behaviour elicited by [the Tenant] which have and will continue to interfere with and unreasonably disturb the other occupants, and seriously jeopardise the health and safety and lawful rights of the other occupants. One tenant has received disturbingly sexually-charged telephone calls.

Another tenant informed me that she came home to find [the Tenant] in her unit; he was not invited and had no right to be in her unit.

Aside from that incident, [the Tenant] continues to make disturbing comments to her which cause her to fear for her safety. She suffers from a brain injury and I am informed that the stress caused by [the Tenant] triggers seizures.

Another tenant has informed me that [the Tenant] entered his unit and ransacked his bedroom. On a separate occasion, [the Tenant] knocked on his door, then entered without permission and began to yell and utter verbal threats at the tenant, followed by a challenge to a fight.

These incidents continue and [the Tenant] seems to show no remorse or make amends. His behaviour seems to be tied to his alcohol abuse and he has not nor seemingly intends to take any steps towards rehabilitation.

The Landlord brought two witnesses to this hearing to give evidence about their experiences with the Tenant. I acknowledge their testimony, comments from the Tenant were sexually charged and abusive. For these two women, giving testimony was hard, especially so because they both knew that the Tenant was listening on the phone. Given the outcome of this decision, I do not need to go into the lewd details of their testimonies. The Tenant was sexually harassing and inappropriate.

The Landlord is seeking an Order of Possession to get the Tenant out of the residential property.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 47 of the Act is the relevant section for this matter. It states:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(d) *the tenant or a person permitted on the residential property by the tenant has*

(i) *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

- (ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

...

- (2) *A notice under this section must end the tenancy effective on a date that is*
 - (a) *not earlier than one month after the date the notice is received, and*
 - (b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*
- (5) *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit by that date.*

I find that the Landlord's One Month Notice complies with the form and content requirements of Section 52 of the Act. I previously found that the Tenant's application is dismissed without leave to re-apply.

Although not repeated, the Landlord's witnesses provided testimony that was both egregious and sexually abusive. The Landlord has proven on a balance of probabilities that he has cause to end this tenancy and I uphold his notice.

As the Tenant failed in his application, I must consider if the Landlord is entitled to an Order of Possession. Section 55(1) of the Act reads as follows:

Order of possession for the landlord

- 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.*

I find that the One Month Notice submitted into documentary evidence complies with Section 52 of the Act. I have upheld the Landlord's One Month Notice, and he is entitled to an Order of Possession pursuant to Section 55(1) which will be effective two (2) days after service on the Tenant.

Conclusion

The Tenant's application for dispute resolution is dismissed, and the Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme 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 Act.

Dated: March 08, 2022

Residential Tenancy Branch