



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT, OPC, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On February 6, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 14, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package by registered mail on or around February 14, 2022, and the Landlord acknowledged receipt of this package. Based on this undisputed testimony, and in accordance with Sections

89 and 90 of the *Act*, I am satisfied that the Landlord was duly served with the Notice of Hearing package.

He then advised that he served his evidence package to the Landlord by hand on April 23, 2022, and the Landlord confirmed that he received this package. Based on the undisputed testimony, I am satisfied that the Landlord was served the Tenant's evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

The Landlord advised that he served the Tenant the Notice of Hearing package by registered mail on February 24, 2022, but this package was returned to sender. The Tenant stated that he did not receive this package. Regardless, while this package could be determined to have been deemed received five days after it was mailed, as the Landlord's Application for an Order of Possession was not required to be filed due to the Tenant's own Application, I find it is not necessary to make a determination on this issue.

The Landlord then advised that he served his evidence package to the Tenant by registered mail on April 10, 2022 (the registered mail tracking number is noted on the first page of this Decision) and April 25, 2022. The Tenant stated that he only received the Landlord's April 25, 2022 evidence package and that he could view the Landlord's digital evidence. The Landlord submitted that the tracking history for the April 10, 2022 evidence package indicated that this was delivered. Based on the evidence before me, I am satisfied that the Landlord's April 10, 2022 evidence package was, more likely than not, received. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 16, 2018, that rent was currently established at \$510.00 per month, and that it was due on the first day of each month. A security deposit of \$250.00 was also paid. A written tenancy agreement was never completed by the Landlord prior to entering into a tenancy with the Tenant. As such, this was an unwritten, month-to-month tenancy agreement.

The Landlord submitted that the Notice was served to the Tenant by hand on February 1, 2022, and the Tenant clearly received this as he disputed it within the required timeframe. The reasons the Landlord served the Notice are because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord”, “seriously jeopardized the health or safety or lawful right of another occupant of the landlord”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice indicated that the effective end date of the tenancy was March 1, 2022.

The Landlord advised that the Tenant would smoke close to the building, and the proximity of this would bother the other residents of the building because of health concerns. He stated that one resident went to talk to the Tenant about this behaviour, and he was combative towards her. He referenced documentary evidence regarding complaints from a resident of the building due to being disturbed by the Tenant’s smoking behaviours, and he testified that he gave the Tenant a warning letter on November 30, 2020. As well, he served the Tenant with another warning letter on

December 3, 2021 to cease from smoking so close to the building. Included in this letter was information pertaining to prohibitions from smoking within 6 metres of common areas, doorways, windows, or air intakes. He then referenced videos submitted demonstrating that the Tenant continued to smoke, contrary to this letter, on at least two occasions on December 18, 2021 and February 2, 2022.

The Tenant acknowledged that he smoked “too close” to the building and that the Landlord warned him about his smoking behaviours “once, for sure” but “it might have been more”. He testified that he continued to smoke contrary to the warning, and that he only refrained from smoking near the building once the Landlord served him with a letter containing the tobacco regulations. He then made contradictory statements about being warned about these behaviours, and what actions he took after he was warned. Regarding the Landlord’s submissions that the Tenant smoked after this warning letter of December 3, 2021, the Tenant stated that he was “not going to admit guilt over the phone”, that the submissions provided by the Landlord were “a lot to digest”, and that he “did not recall” what actions he took after receiving this warning letter. The Tenant was afforded multiple opportunities to provide a response to these specific submissions by the Landlord. However, he continued to decline to supply a response, and he stated that that was the “best he could do”. He also questioned what his options were to appeal a Decision that was not in his favour.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

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

In reviewing the totality of the evidence before me, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

While the Tenant was inconsistent and contradictory in his testimony, I note that he acknowledged receiving a warning letter from the Landlord about tobacco regulations and refraining from smoking near the building, as per those regulations. Given that he submitted this December 3, 2021 letter as part of his own documentary evidence, there is no doubt that he received this warning, at the very least. While he initially claimed not to have smoked near the building at any point after receiving this letter, he could not provide any response to the Landlord's evidence demonstrating that the Tenant had contradicted his own affirmed testimony by smoking near the building on at least two occasions after December 3, 2021. I find that the contradictions in the Tenant's testimony causes me to doubt the truthfulness and reliability of his submissions.

Furthermore, I note that the Tenant acknowledged that at some point prior to the December 3, 2021 warning letter, he was also warned by the Landlord to refrain from smoking near the building as it was bothering other residents. He confirmed that he actively ignored the Landlord's warning until he was provided with the tobacco regulations on December 3, 2021. Given the doubts created by the Tenant's inconsistent testimony, I find it more likely than not that the Tenant's consistent pattern of behaviour was to simply ignore the Landlord's warnings and to continue to smoke near the building.

Considered in its totality, I find the Landlord to be a more credible witness than the Tenant. The Landlord provided consistent testimony, which was supported with documentary evidence where available. I find that the Tenant was evasive, defensive, and contradictory when making submissions, and I do not find that his testimony was compelling. The Tenant focused much on irrelevant matters, as he appeared to be more concerned with making himself to be the wronged party. Based on the foregoing, where the evidence of the parties clashed, I found that the Landlord's version to be more credible.

As such, I am satisfied that the Tenant smoked too close to the building, that this disrupted the quiet enjoyment of some residents of the building, that the Landlord warned the Tenant to refrain from these behaviours, and that the Tenant continued to do so despite being warned multiple times.

Ultimately, I find that the Landlord has provided sufficient evidence to justify service of the Notice under the reason of significantly interfering with or unreasonably disturbing another occupant or the Landlord. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant. 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 **two days** after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Tenant was not successful in his claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in his claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I permit the Landlord to deduct this amount from the security deposit.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any occupant on the premises 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: May 11, 2022

Residential Tenancy Branch