



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:49 A.M. to enable tenant GF (the tenant) to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent HT (the landlord), attended the hearing and was 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I note the only applicant is the tenant.

Preliminary Issue – Service

The landlord confirmed receipt of the notice of hearing and evidence (the materials) on February 15, 2022.

The landlord served the response evidence via registered mail on April 20, 2022. The tracking numbers are recorded on the cover page of this decision. The landlord affirmed the tenants are the tenant and SY.

Based on the landlord's convincing testimony, I find the tenant served the materials in accordance with section 89(1) of the Act.

Residential Tenancy Branch (RTB) Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

Per section 90(a) of the Act, the tenant is deemed served the response evidence on April 25, 2022.

Rule of Procedure states: "In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded."

The hearing was on May 02, 2022. I find the landlord's evidence was served late, as it was deemed served on the seventh day before the hearing, including the last day. The landlord's response evidence is excluded, per Rule of Procedure 3.15.

Preliminary Issue – Application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Accordingly, in the absence of any attendance at this hearing by the applicant (tenant) I order the tenant's application dismissed without leave to reapply.

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 is compliant with the *Act*.

Relying on *M.B.B. v. Affordable Housing Charitable Association*, 2018 BSCS 2418, the landlord must still prove the grounds to end the tenancy when a tenant does not appear to present their application to cancel the notice:

[27] I accept that it was open to the arbitrator to proceed with the hearing or dispense with the hearing altogether and decide the matter in the absence of M.B.B., but in doing so, the arbitrator still had to resolve the issue raised by the application on the merits in some way. It was insufficient to dismiss the application solely on the ground that M.B.B. had not dialed in to the hearing within the first ten minutes as she was supposed to have done.

Issue to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

The landlord affirmed the periodic tenancy started on August 01, 2018. Monthly rent of \$1,026.00 is due on the first day of the month. The landlord collected and holds a security deposit of \$500.00. The tenants are the tenant and SY.

The landlord served the notice via registered mail on January 24, 2022. The tracking number is recorded on the cover page of this decision.

A copy of the January 24, 2022 Notice was submitted into evidence. The effective date is February 28, 2022. The reason to end the tenancy is: the tenant significantly interfered or unreasonably disturbed another occupant or the landlord. The tenants named in the Notice are the tenant and SY.

The details of the cause are:

Over the course of the tenancy there have been many disturbances from the occupants of the unit that have affected the right to quiet use and enjoyment of the other residents at the property. The complaints received from various residents detail police & social services presence due to the volatility of the domestic fighting that has occurred in the morning and late nights on multiple occasions. Upon inspection on January 24, 2022 the tenant stated he has two cats in the unit which is an infraction of the strata bylaws. The unit has damage to the kitchen cupboards, and is in a general state of uncleanliness and disrepair.

The landlord stated that the tenant informed on April 28, 2022 that he moved out, but co-tenant SY continues to occupy the rental unit.

The landlord testified the tenant had several domestic violence disputes with SY. The police and the Ministry of Children and Family Development have attended the rental unit several times.

The landlord said that on December 06, 2021 the parties attended a hearing at the RTB and agreed to cancel a notice to end tenancy served in July 2021 because of domestic violence. The landlord verbally warned the tenant that he could serve a new notice to end tenancy if there is another incident of domestic violence.

The landlord affirmed that on December 17, 2021 the next-door neighbour submitted a complaint against the tenant and SY because of domestic violence noise at 1:00 A.M.

The landlord inspected the rental unit on January 21, 2022 and learned the tenant has 3 pets in the rental unit and the rental unit was in a state of disrepair. The tenancy agreement does not allow the tenant to have pets.

Analysis

Based on the undisputed landlord's testimony, I deem the tenant was served the Notice on January 29, 2022, five days after the landlord sent it by registered mail, in accordance with sections 88(c) and 90 (a) of the Act.

Section 47 of the Act allows a landlord to end a tenancy for cause:

(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,

Based on the landlord's undisputed convincing testimony, I find the landlord warned the tenant that he may be served a new notice to end tenancy if the tenant has another domestic violence incident, on December 17, 2021 the tenant had another domestic violence incident and the neighbour submitted a complaint to the landlord because of the domestic violence noise. I find the tenant significantly interfered with and unreasonably disturbed other occupants of the rental building.

Thus, I find the landlord is entitled to end the tenancy, pursuant to section 47(1)(d)(i) of the Act.

As the Notice is confirmed, I make no findings regarding the other reasons cited by the landlord to end the tenancy.

I find the form and content of the Notice complies with section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date and is in the approved form. I confirm the Notice and find the tenancy ended on February 28, 2022.

Based on the landlord's undisputed testimony, I find that SY continues to occupy the rental unit. RTB Policy Guideline 13 states:

There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. "Jointly and severally" means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement.

Based on my findings noted above, pursuant to section 55(1) of the Act, I find the landlord is entitled to an order of possession effective two days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I grant an order of possession to the landlord effective two days after service of this order. Should the tenant 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 03, 2022

Residential Tenancy Branch