



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated November 25, 2021 (the "One Month Notice") pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act.

The Landlord's agents TH and JK attended the hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:40 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agents and I were the only ones who had called into the hearing.

I advised TH and JK that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings. TH and JK confirmed that they were not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

TH and JK testified that JK served the Tenant with a copy of the notice of dispute resolution proceeding package and Landlord's documentary evidence in person on February 16, 2022.

The Residential Tenancy Branch system records indicate that the original hearing date for this matter was May 17, 2022. This hearing was later rescheduled to May 16, 2022 due to a hearing conflict for the Landlord. On March 31, 2022, the Residential Tenancy Branch sent copies of the new notice of dispute resolution proceeding, with instructions for attending this hearing on May 16, 2022, to the Landlord via email and to the Tenant via mail.

TH testified they served the Tenant with a copy of the new notice of dispute resolution proceeding in person again on May 2, 2022.

Based on the above, I find the Tenant to have been served with the initial notice of dispute resolution proceeding package, the new notice of dispute resolution proceeding, and the Landlord's documentary evidence in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The Landlord submitted a copy of the parties' tenancy agreement into evidence. TH confirmed the particulars of the tenancy as follows:

- The tenancy commenced on December 1, 2019 and is month-to month.
- Rent is \$375.00 per month, due on the first day of each month.
- The Tenant paid a security deposit of \$187.50, which is held by the Landlord.

A copy of the One Month Notice is included in the Landlord's submitted evidence. The One Month Notice is dated November 25, 2021 and has an effective date of December 31, 2021.

The One Month Notice describes the following behaviours of the Tenant as the cause for issuing the notice, which TH confirmed during the hearing:

- Setting off the building alarm on at least five occasions in 2021 by deliberately pulling the fire alarm without any fire being present;
- Failing to pay costs associated with fire department call-outs for the false alarms;
- Breaking into a neighbouring unit on October 21, 2021 and November 3, 2021, during which the Tenant removed items belonging to the Landlord;
- Repeatedly allowing access to a barred guest who had been evicted from the building shortly beforehand, for a serious violent incident in which another tenant was stabbed;
- Permitting the barred guest to use the rental unit as a base for break-ins to other units and continued threatening behaviour;
- Causing substantial property damage in the rental unit, including removing a heater and thermostat from the walls of the rental unit; and
- Writing threats on other tenants' doors, including demands for debt collection which identify the rental unit as where the money must be paid.

The Landlord submitted copies of warning letters sent to the Tenant on August 6, 2020, October 25, 2021, November 3, 2021, and November 5, 2021. These letters warned the Tenant that her tenancy was in jeopardy due to the above problematic behaviours.

TH testified that attempts have been made to help the Tenant get support, but the Tenant never followed through. TH confirmed there has been no improvement to the Tenant's poor behaviour, which continues to negatively impact other building residents, staff, and guests.

TH testified they served the Tenant in person with a copy of the One Month Notice on November 25, 2021, which was witnessed by JK. The Landlord submitted a signed Proof of Service in form #RTB-34.

The Tenant has not made an application to dispute the One Month Notice. TH and JK confirmed the Tenant is still residing in the rental unit.

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.

1. Is the Landlord entitled to an Order of Possession?

Sections 47(1)(d), (e), and (h) of the Act state 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, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) 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

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[...]

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so; [...]

In this case, I find that the Landlord has established cause for issuing the One Month Notice to end the tenancy under sections 47(1)(d), (e), and (h).

I am satisfied, based on TH's undisputed testimony and the Landlord's submitted documents, that the behaviours of the Tenant as described amount to cause for ending the tenancy under sections 47(1)(d) and (e).

With respect to cause under section 47(1)(h) of the Act, I find paragraphs 17(b), 26, 28, schedule C1 and the Crime Free Addendum to be material terms in the parties' tenancy agreement. I find the Tenant breached these terms, which relate to compliance with rules and prohibitions against illegal activities, by engaging in behaviours such as pulling the fire alarm and breaking into other units. I find the Tenant did not correct the situation within a reasonable time after the Landlord gave multiple written warnings.

Section 47(3) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy 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,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept TH's undisputed testimony and the Landlord's signed Proof of Service to find that the Tenant was served with a copy of the One Month Notice in person on November 25, 2022, in accordance with section 88 of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until

December 5, 2021 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by December 5, 2021 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, section 55(2)(b) of the Act states as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

I find that, pursuant to section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, which is December 31, 2021.

Accordingly, I find the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Since the effective date of the One Month Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to recover the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the \$187.50 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

I grant an Order of Possession to the Landlord effective two (2) days after service upon 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.

The Landlord is authorized to deduct \$100.00 from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's security deposit shall be dealt with in accordance with the Act, the Residential Tenancy Regulation, and the parties' tenancy agreement.

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 24, 2022

Residential Tenancy Branch