



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASK WELLNESS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

This expedited hearing was scheduled to convene at 9:30 a.m. on June 10, 2022 concerning an application made by the landlord seeking an Order of Possession ending the tenancy earlier than a notice to end the tenancy would take effect, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent testified that the tenant was served with the Notice of Expedited Hearing Dispute Resolution Proceeding and other required documents (the Hearing Package) along with all evidence by posting the package to the door of the rental unit on April 28, 2022, and by registered mail the same day. The landlord's agent was permitted to provide proof of such service after the hearing had concluded. I now have a Proof of Service Notice of Expedited Hearing Dispute Resolution Proceeding signed by the landlord's agent confirming the notice was served in that manner, and by a witness, both dated April 28, 2022. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord?
- Should the landlord be granted an Order of Possession of the rental unit without the necessity of waiting for a notice to end the tenancy to take effect?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2022. Rent is subsidized and the tenant's share is \$346.00 per month, payable on the 1st day of each month. Market rent is set at \$850.00 per month, and at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of approximately 43 apartments in a complex; the landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that although the tenant's belongings are still in the rental unit, the tenant was arrested and released with a condition that the tenant not attend on the rental property except by police escort. A copy of the Undertaking has been provided for this hearing.

On April 5, 2022 the tenant was served with a One Month Notice to End Tenancy for Cause by placing it in the tenant's mailbox. A copy of the Notice has been provided for this hearing and it is dated April 5, 2022 and contains an effective date of vacancy of May 30, 2022. The reasons for issuing it state:

- 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 or the landlord;
 - put the landlord's property at significant risk;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Police attended the rental complex almost every day, and the tenant was arrested and released, and then arrested again. A copy of a police report containing several incidents has been provided for this hearing. They involve harassing other tenants and occupants across the parking lot, as well as exposing himself and assault. Copies of letters from other tenants have also been provided for this hearing indicating intimidation, harassment and fear of the tenant. Also provided are Critical Incident Reports from staff of the rental complex, one of which describes an assault on another resident by the tenant. The Critical Incident Reports also describe the tenant taking photographs and videos of other residents, and grabbing his private parts, yelling

sexually explicit comments toward a staff member and a client, making sexual hand gestures, swearing and threatening. One of the Critical Incident Reports also states that while on his balcony the tenant yelled at people and threw boiling water off the balcony directed at other people. Also provided are warning letters addressed to the tenant dated March 8, 2022 and March 29, 2022.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the One Month Notice to End Tenancy for Cause, and the landlord seeks an Order of Possession and recovery of the filing fee.

Analysis

I have reviewed all of the landlord's evidentiary material, and I find that there is clear evidence that the tenant poses an immediate and severe risk to the rental property, other occupants or the landlord, considering the police reports, Critical Incident Reports and statements from other residents.

Also, the *Residential Tenancy Act* also states that where a tenant is served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute it. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony that the tenant was served with the One Month Notice to End Tenancy for Cause on April 5, 2022, which is deemed to have been served 3 days later, or April 8, 2022. The time for filing a dispute expired on April 18, 2022. The landlord's agent testified that the landlord has not been served with a Notice of Dispute Resolution Proceeding by the tenant disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

In the circumstances, I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy contained in the One Month Notice to End Tenancy for Cause has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the filing fee. I grant a monetary order in favour of the landlord in that amount and I order that the landlord be permitted to keep that amount from the security deposit held in trust, or may otherwise collect it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

The landlord must serve the tenant with the orders prior to enforcement.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the landlord may keep that amount from the security deposit held in trust or may otherwise recover it.

This order is final and binding and may be enforced.

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: June 10, 2022

Residential Tenancy Branch