



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 December 28, 2021 (the "One Month Notice") pursuant to sections 47 and 55 of the Act; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act.

The Landlord's agents VP, MD, and CC 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 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. 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 VP, MD, and CC that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings. They confirmed that they were not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

VP testified they sent the Landlord's notice of dispute resolution proceeding package and initial supporting documentary evidence (the "Landlord's NDRP Package") to the Tenant by registered mail on February 24, 2022. The Landlord submitted a Canada Post registered mail receipt with a tracking number in support of service. This Canada Post tracking number is the first of two tracking numbers referenced on the cover page of this decision.

VP testified they sent digital evidence in a USB stick and additional photographic evidence (collectively, the “Landlord’s Supplementary Evidence”) to the Tenant by registered mail on April 8, 2022. The Landlord submitted a copy of the Canada Post registered mail receipt and tracking number in support. This tracking number is the second of the two tracking numbers referenced on the cover page of this decision.

Based on the above, I find that the Landlord served the Tenant with the Landlord’s NDRP Package and the Landlord’s Supplementary Evidence in accordance with sections 88(c) and 89(1)(c) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the Landlord’s NDRP Package on March 1, 2022, and the Landlord’s Supplementary Evidence on April 13, 2022.

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 tenancy agreement into evidence. VP confirmed the particulars of the tenancy as follows:

- The tenancy commenced on September 23, 2020 for a fixed term ending on September 30, 2021, and continued thereafter on a month-to-month basis.
- Rent is currently \$1,877.75 per month, due on the first day of each month.
- The Tenant paid a security deposit of \$925.00 and a pet damage deposit of \$300.00, which are 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 December 28, 2021 and has an effective date of January 31, 2022. The One Month Notice describes the following behaviours of the Tenant as the cause for issuing the notice:

Graffiti and littering in the elevator, assault of other tenants in the building, sending threatening notes to tenants.

The Landlord submitted copies of warning letters to the Tenant dated December 22, 2021, December 24, 2021, and December 28, 2021, which contain the following excerpts:

The reports indicated that on December 20, 2021, residents on [redacted] floors received unwanted messages slipped under their entrance doors. It was also observed that you have slammed your entrance door resulted to your neighbours disturbed with the loud sound and the shaking of their rented unit walls. Further, reports noted that you created graffiti on elevator #3 and you threw white powder on the surveillance camera. In addition, on December 22, 2021 you were seen taping a compact disc on the glass wall of elevator #2.

[...]

Specifically, we have received a complaint that on December 23, 2021, at approximately 10:40 am you allegedly yelled at a tenant who was waiting for the elevator on the [redacted] floor with her two daughters because, in your opinion, they were speaking loudly. Then, you allegedly “proceeded to slap one of the daughters” and slammed your suite door. Police were notified.

We have also received a complaint that you allegedly put a note and a picture of threatening nature under one of the suite doors.

[...]

Specifically, we have received another complaint that on December 23, 2021, you put a note under the tenant’s door threatening to kill. Police were notified.

VP provided verbal testimony corroborating the above-described incidents. VP testified there has been no improvement in the Tenant’s behaviour, and that in fact things have gotten worse. VP testified that the Tenant retaliated against other tenants who had complained, by putting threatening notes under their doors. VP stated that police have attended the property several times and had to remove the Tenant on one occasion in March 2022.

The Landlord submitted a substantial amount of video, photographic, and documentary evidence in support of the allegations against the Tenant, including:

- A note bearing police file number 21-210994 for the incident of alleged assault on December 23, 2021;
- Photographs and video recordings of the Tenant using permanent marker to draw graffiti and throwing fruit syrup in common areas of the building, including in elevators and on other tenants' doors;
- Photographs of permanent marker graffiti and litter, including garbage, rice, cereal and fruit syrup, left by the Tenant in common areas such as hallways, elevators, and on other tenant's doors;
- A video recording of Tenant slipping notes under other tenants' doors;
- Photographs of threatening notes received by other tenants;
- Photographs and video recordings of the Tenant tampering security cameras, including spray painting on, writing on, and pulling wires from the security cameras;
- Email complaints from other tenants about the Tenant's behaviours; and
- Cleaning invoice to the Tenant for graffiti and litter left in common areas between December 2021 and March 2022.

In addition, the Landlord submitted copies of letters given to the Tenant confirming that rent accepted after the effective date of the One Month Notice was for use and occupancy only.

CC confirmed she served Tenant with a copy of the One Month Notice by posting it to the Tenant's door on December 28, 2021. The Landlord submitted a signed Proof of Service form (#RTB-34) in support of service.

The Tenant has not made an application to dispute the One Month Notice. VP 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)(i), 47(1)(d)(ii), and 47(1)(e)(ii) 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

[...]

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

[...]

(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 [...]

In this case, I find that the Landlord has established cause for issuing the One Month Notice to end the tenancy under section 47(1)(d)(i) of the Act.

I accept the Landlord's undisputed testimony and evidence to find, on a balance of probabilities, that the Tenant has left graffiti and litter in the common areas, including on other tenants' doors, on numerous occasions between December 2021 and March 2022. I accept the Landlord's evidence and find that the Tenant has slipped threatening messages under other tenants' doors. I find that by repeatedly engaging in such behaviour, the Tenant has significantly interfered with or unreasonably disturbed other occupants of the residential property.

In light of the above, I find it is unnecessary for me to further consider whether the Landlord has established cause for ending the tenancy under sections 47(1)(d)(ii) and 47(1)(e) of the Act.

Section 47(3) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 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 a copy of the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I accept CC's undisputed testimony and the Landlord's signed Proof of Service to find that a copy of the One Month Notice was posted to the Tenant's door on December 28, 2021, in accordance with section 88(g) of the Act. I find that pursuant to section 90(c) of the Act, the Tenant is deemed to have received the One Month Notice on December 31, 2021.

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 January 10, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by January 10, 2022 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 January 31, 2022.

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?

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 \$925.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application. The balance of the Tenant's security deposit should be dealt with in accordance with the Act, the Residential Tenancy Regulation, and the parties' tenancy agreement.

Conclusion

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

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 3, 2022

Residential Tenancy Branch