



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord and the Tenant. All parties provided affirmed testimony.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings, pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure). The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The Parties were also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent(s) must be served with a copy of the Application and the Notice of Hearing. The Tenant stated that the NODRP package was sent by registered mail to the Landlord's address, along with a copy of the One Month Notice, on April 29, 2022, and provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. With the consent of the parties, I verified via the Canada Post website that the registered mail was sent as set out above and delivered on May 17, 2022. As the Landlord acknowledged receipt of the

above noted documents on May 17, 2022, and raised no concerns with regards to the date or method of service, I therefore find that the Landlord was sufficiently served for the purposes of the *Act* and the Rules of Procedure. The hearing therefore proceeded as scheduled.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application and confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

Although the Landlord acknowledged receipt of the Tenant's documentary evidence, which consisted only of the 3-page One Month Notice, the Tenant denied receipt of any documentary evidence from the Landlord in relation to this hearing. When asked how and when they had served the documentary evidence before me on the Tenant, the Landlord stated that as they were all either documents given to the Tenant by them during the tenancy, or copies of communications between them during the tenancy, they did not give the Tenant copies specifically in relation to this hearing.

Rule 3.15 of the Rules of Procedure states that the respondent must ensure evidence that they intend to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible and not less than seven days before the hearing, preferably in a single complete package. The ability to know the case against you and prepare evidence in your defense, is fundamental to the dispute resolution process. As a result, I find that it would be a breach of the Rules of Procedure as well as the principles of administrative justice and procedural fairness, to accept the documentary evidence before me from the Landlord for consideration.

Although the Landlord argued that they did not know they needed to serve their documentary evidence on the Tenant as they were not advised about this from the Branch, I do not accept this argument as a valid reason to accept the Landlord's documentary evidence. The NODRP package, which the Landlord acknowledged

receiving, states on page 2 that the Rules of Procedure apply to the dispute resolution proceeding and provides the website address where the Rules can be viewed. As a result, I find that the Landlord's lack of knowledge regarding the requirements for service of evidence is a direct result of their own lack of due diligence in reviewing and understanding the NODRP package documents served upon them by the Tenant. The Landlord also argued that I should accept the documents for consideration as the Tenant already received them during the tenancy. Again, I do not accept this argument as I find that it would be unreasonable for the Tenant to have had to predict which of the many documents they received during their tenancy, and which of the many communications between themselves and the Landlord, the Landlord intended to reply upon at the hearing. As a result, I have therefore excluded all the documentary evidence before me from the Landlord from consideration.

Preliminary Matter #2

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of a One Month Notice to End Tenancy for Cause (the One Month Notice)?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

Although a copy of the tenancy agreement was not before me, at the hearing the parties agreed that a written tenancy agreement exists, that the tenancy commenced in March of 2021, that the tenancy is currently month-to-month (periodic) in nature, and that rent in the amount of \$1,100.00 is due on the first day of each month. The parties also agreed that although the street address is the same for the Landlord and the Tenant, the Tenant resides in a separate self-contained suite from the Landlord.

The Landlord stated that the Tenant has routinely denied access to the rental unit since the start of the tenancy, but this has been particularly problematic since the start of March 2022, as the property was listed for sale and the Tenant's refusal to grant access to the rental unit prohibited showings and ultimately resulted in a lower sale price. Although the Landlord stated that the purchaser intends to reside in the property themselves, or have it occupied by a close family member, the parties agreed that no Two Month Notice for Landlord's Use of Property (Two Month Notice) had been served by the Landlord on behalf of the purchaser.

The Landlord stated that they posted the One Month Notice on the door of the rental unit on April 9, 2022, and the Tenant acknowledged receipt on that date. The One Month Notice in the documentary evidence before me from the Tenant is on a 2021 version of the form, is signed and dated April 9, 2021, and has an effective date of April 9, 2022. No grounds for ending the tenancy were selected on page 2 of the One Month Notice, but in the details of cause section of the form the Landlord wrote that ever since the Tenant moved in, they have not allowed access to the rental unit, where the hot-water tank and other household utilities are located. The Landlord stated that they have had lots of difficulty because of the Tenant's refusal to allow access, such as not being able to replace a filter and not being able to show the rental unit to prospective buyers, which has resulted in an inability to sell the property.

The Tenant denied the allegations made by the Landlord at the hearing and in the One Month Notice. The Tenant stated that they have not denied access to the rental unit when served with a notice of entry as required, but that since the start of the tenancy the Landlord has only ever given them notice under section 29 of the *Act* on three occasions. The Tenant stated that on two of those occasions the Landlord did not show up, and that they allowed access on the third occasion for a home inspection related to the sale of the property. The Tenant acknowledged that the Landlord had requested access on other occasions, but stated that for one reason or another, they could not mutually agree on a date and time for entry. The Tenant stated that the Landlord did not subsequently serve them with a notice of entry on those occasions, and therefore they were not preventing access. Instead, the Tenant argued that the Landlord simply had not complied with the *Act* by serving a notice of entry when they were unsuccessful in getting a mutual agreement for the entry from the Tenant.

The Tenant also argued that the One Month Notice had not been served in good faith, as the Landlord had twice attempted to increase the rent without authority under the *Act*

to do so, and the One Month Notice was served shortly after the Tenant denied the Landlords second request to increase rent. The Landlord denied serving the One Month Notice in bad faith, stating that the reason they were seeking to increase the rent was because the Tenant had permitted an unauthorized occupant and the rent had been set low as only the Tenant was supposed to be residing there.

Analysis

Based on the documentary evidence and testimony before me for consideration from the parties, I find that a tenancy to which the Act applies exists between them and that the One Month Notice was served on the Tenant on April 9, 2022. As the Tenant filed the Application seeking cancellation of the One Month Notice on April 17, 2022, I find that the Tenant complied with section 47(4) of the *Act*, and that conclusive presumption under section 47(5) of the *Act* does not apply.

Section 47 of the *Act* states a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (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;
- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32
- (3) [*obligations to repair and maintain*], within a reasonable time;
- (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;
- (i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i)the date the tenant receives the order;
 - (ii)the date specified in the order for the tenant to comply with the order.

Section 52 of the *Act* states that 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.

Although the Landlord provided details in the details of cause section of the One Month Notice regarding the behavior of the Tenant, they did not indicate which of the above noted grounds they were intending to end the tenancy under as a result of the Tenant's behavior. As a result, I find that the Landlord did not comply with section 52(d) of the *Act*. I also decline to correct the notice under section 68 as I do not find that the Tenant knew or ought to have known which of the grounds under section 47 of the *Act* the Landlord intended to rely on, and therefore I find that it would not be reasonable under the circumstances to do so.

Based on the above, I therefore grant the Tenant's Application seeking cancellation of the One Month Notice. Pursuant to sections 72(1) of the *Act*, I also grant the Tenant recovery of the \$100.00 filing fee. The Tenant may deduct this amount from the next month's rent payable under the tenancy agreement, pursuant to section 72(2)(a) of the *Act*, or serve and enforce the attached Monetary Order, issued pursuant to section 67 of the *Act*, but not both.

Conclusion

I order that the One Month Notice is cancelled, and that tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial

Court and enforced as an Order of that Court. In lieu of serving and enforcing the Monetary Order, the Tenant is entitled to deduct this amount from the next month's rent payable under the tenancy agreement, should they wish to do so.

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 16, 2022

Residential Tenancy Branch