



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CALLAHAN PROPERTY GROUP
LTD. and [tenant name suppressed to protect privacy]

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 15, 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.

The Landlord's agents EA and JU attended the hearing. EA and JU were given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

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 access 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 EA and JU that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings. EA and JU confirmed they were not recording this dispute resolution hearing.

Preliminary Matter – Service of Dispute Resolution Documents

EA confirmed the notice of dispute resolution proceeding package and the Landlord's documentary evidence (collectively, the "NDRP Package") were given to the Tenant in

person on March 24, 2022. The Landlord submitted a signed Proof of Service in support. Based on EA's testimony and the Landlord's evidence, I find that the Tenant was served with the NDRP Package on March 24, 2022 in accordance with sections 88(a) and 89(2)(a) of the Act.

EA confirmed the Landlord did not receive any documentary evidence from the Tenant.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

EA testified the tenancy commenced on September 1, 2015 with a different tenant. EA stated the tenancy was assigned to the Tenant on March 1, 2017. The parties subsequently renewed their tenancy agreement for a 1-year fixed term beginning on March 1, 2021 and ending on March 1, 2022. Thereafter, the tenancy was to continue on a month-to-month basis. EA confirmed rent is currently \$1,063.00, due on the first day of each month. The Landlord holds a security deposit of \$450.00 in trust for the Tenant.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is dated December 15, 2021 and has an effective date of January 31, 2022. The One Month Notice states the following details of cause:

TENANT HAS RECEIVED 5 NOTICES IN REGARDS TO MAINTAINING THE CLEANLINESS, HEALTH AND SANITARY STANDARDS OF HIS SUITE. COMPLAINT RECEIVED IN REGARDS TO TRASH, FILTH AND BUGS COMING OUT OF HIS SINKS. AS WELL, ALLOWING ACCESS TO HOMELESS PEOPLE TO CAMP IN THE FOYER OF THE BUILDING. BRINGING A DOG INTO THE BUILDING. FINAL NOTICE SENT MAY 2021 TO ABIDE BY THE LANDLORDS REQUIREMENTS TO MAINTAIN HIS UNIT STATED FINAL NOTICE AND 30 DAY NOTICE WILL BE ISSUED.

EA provided verbal testimony to confirm the details of cause for ending the tenancy. The Landlord also submitted copies of warning letters issued to the Tenant.

EA confirmed that the One Month Notice was posted to the Tenant's door and sent to the Tenant via email on December 15, 2021.

EA explained that the Landlord agreed to extend the effective date of the One Month Notice from January 31, 2022 to March 31, 2022.

EA confirmed the Tenant has not disputed the One Month Notice and is still residing in the rental unit.

Analysis

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

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a notice to end tenancy for cause 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 EA's undisputed testimony that a copy of the One Month Notice was posted to the Tenant's door on December 15, 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 18, 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 December 28, 2021 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by December 28, 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, sections 55(2)(b) and 55(4) of the Act state 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; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was deemed served on December 18, 2021, the time for disputing the One Month Notice expired on December 28, 2021, and the Tenant did not make an application for dispute resolution. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the effective date stated on the One Month Notice and the extended effective date of March 31, 2022 agreed to by the Landlord have both 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 \$450.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

Pursuant to section 55 of the Act, 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: July 07, 2022

Residential Tenancy Branch