



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S.U.C.C.E.S.S.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 14, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated January 19, 2022 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00AM on July 4, 2022 as a teleconference hearing. W.C. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 32 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that W.C. and I were the only persons who had called into this teleconference.

W.C. testified the Application and documentary evidence package was served to the Tenant by registered mail on March 25, 2022. The Landlord submitted a registered mail receipt confirming the mailing. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on March 30, 2022, the fifth day after the registered mailing.

W.C. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

W.C. testified that the tenancy began on November 1, 2020. Currently rent in the amount of \$375.00 is due to the Landlord each month. The Tenant paid a security deposit in the amount of \$267.00 which the Landlord continues to hold. A tenancy agreement was provided in support.

W.C. stated that the Landlord served the Tenant with a One Month Notice for Cause dated January 19, 2022 with an effective vacancy date of February 28, 2022. W.C. stated that he had served the One Month Notice to the Tenant in person, but was unsure as to what date the One Month Notice was served to the Tenant. W.C. was given 20 minutes during the hearing to find this information.

W.C. returned to the phone and began to discuss service of a 10 Day Notice. W.C. was reminded that the current Application was in relation to a One Month Notice for Cause. W.C. stated that the Landlord served the One Month Notice on March 15, 2022 by placing it in the Tenant's mailbox. I note that the Landlord submitted this application seeking an Order of Possession based on the One Month Notice on March 14, 2022.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

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:

(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.

(2)A notice under this section must end the tenancy effective on a date that is
(a)not earlier than one month after the date the notice is received,
and
(b)the day before the day in the month, or in the other period on
which the tenancy is based, that rent is payable under the tenancy
agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

In this case, W.C. confirmed that the One Month Notice was served to the Tenant on March 15, 2022 by placing it in the Tenant's mailbox. I accept that the effective date of the One Month Notice is February 28, 2022. I find that the effective date on the One Month Notice is earlier than one month after the notice was served to the Tenant which contradict Section 47(2) of the Act.

Furthermore, I find that the Landlord submitted their Application for an order of possession prematurely given the Application was made on March 14, 2022 and according to W.C., the One Month Notice was served to the Tenant on March 15, 2022.

The Landlord must wait until after the 10 days during which the Tenant is at liberty to dispute the One Month Notice prior to seeking an order of possession.

Lastly, I am not satisfied based on the Landlord's Agent's conflicting testimony and insufficient evidence, that the Landlord served the Tenant with the One Month Notice in accordance with Section 88 of the Act. The onus is on the Landlord to demonstrate that the Tenant was sufficiently served with the One Month Notice.

In light of the above, I dismiss the Landlord's Application in its entirety. The One Month Notice dated January 19, 2022 is cancelled. I order that the tenancy continue until it is ended in accordance with the *Act*.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The One Month Notice dated January 19, 2022 is cancelled. I order that the tenancy continue until it is ended in accordance with the *Act*.

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 05, 2022

Residential Tenancy Branch