



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT
 OPC, FFL

Introduction

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

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

This hearing also dealt with a cross-application filed by the Landlord against the Tenants T.C. and J.M. under the *Act*, seeking:

- an Order of Possession based on the One Month Notice, and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 9:30 AM on August 22, 2022, and was attended by the agent for the Landlord O.B. (the Agent), who provided affirmed testimony. The Tenants did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that Respondents must be served with a copy of the Application and Notice of Hearing. As the Agent acknowledged personal service of the Notice of Dispute Resolution Proceeding Package from the Tenant and raised no concerns regarding the service

method or date of service, I find that the Landlord was therefore sufficiently served with the Tenant's Application for the purposes of the *Act* and the Rules of Procedure. However, as the Tenants did not attend the hearing, I confirmed service of these documents on the Tenants by the Landlord as outlined below.

The Agent testified that on May 16, 2022, the Application and the Notice of Hearing (NOH) were sent to the Tenants at the rental unit address by registered mail. The Agent provided a copy of the front of the envelope with the date stamp from the post office and the registered mail tracking number affixed. The envelope also shows that the registered mail was addressed to both Tenants and that the rental unit address was used as the mailing address for the package. Pursuant to sections 89(1)(c) and 90(a) of the *Act*, I therefore find that the Tenants were deemed served with the Landlord's NODRP package on May 21, 2022. The hearing of both Applications therefore proceeded as scheduled despite the absence of the Tenants pursuant to rules 7.1 and 7.3 of the Rules of Procedure.

Although the Agent stated that they had not received any documentary evidence from the Tenants with regards to their Application seeking cancellation of the One Month Notice, they stated that they had sent the documentary evidence before me from the Landlord to the Tenants by registered mail on August 2, 2022. The Agent provided copies of the registered mail tracking numbers and receipts, indicating that the registered mail packages were sent to each of the Tenants at the rental unit address on August 2, 2022. The Agent also provided a photograph showing the contents of the registered mail packages. Pursuant to sections 88(c) and 90(a) of the *Act*, I therefore find that the Tenants were deemed served with the Landlord's documentary evidence on August 7, 2022, if not earlier received. Based on the above, I therefore accepted the documentary evidence before me from the Landlord for consideration. Based on the above and pursuant to rule 7.4 of the Rules of procedure, the documentary evidence before me from the Tenants was not accepted for consideration.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over myself and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be e-mailed to them at the e-mail address listed in their Application.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the One Month Notice?

If not, is the Landlord entitled to an Order of Possession pursuant to section 55(1)?

Is either party entitled to recovery of the filing fee?

Background and Evidence

TEXT

Analysis

The Tenancy agreement in the documentary evidence before me, which lists both T.C. and J.M. as tenants, states that the one-year fixed-term tenancy began on October 1, 2021, and is set to end on September 30, 2022, after which time the tenancy may continue on a month-to-month (periodic) basis. The tenancy agreement states that rent in the amount of \$1,600.00 is due on the first day of each month and that an \$800.00 security deposit is required. At the hearing, the Agent confirmed that the above details are correct, and that the Landlord still holds the \$800.00 security deposit in trust.

The One Month Notice in the documentary evidence before me, signed and dated April 21, 2022, has a vacancy date of May 21, 2022, and states the following reasons for ending the tenancy:

- The Tenants or a person permitted on the property by the Tenants has significantly interfered with or unreasonably disturbed another occupant or the Landlord;

- The Tenants or a person permitted on the property by the Tenants has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord; and
- The Tenants have breached a material term of the tenancy agreement and failed to correct the breach within a reasonable time after written notice to do so.

In the details of cause section of the One Month Notice it states:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): Tenants 217 C repeatedly harass and annoy the tenants downstairs by loud music after 1 AM, movement of furniture past 11 PM, knocking on the door tenants 117 C and threatening them. Police case numbers could be provided.

The Agent testified that the One Month Notice was posted to the door of the rental unit in the presence of a witness on April 21, 2022, and submitted witnessed and signed proof of service documents to that affect. Records at the Branch show that the Tenants filed their Application seeking to dispute the One Month Notice on April 21, 2022, the same date the Agent stated that it was posted to the door of the rental unit.

The Agent states that the reasons for termination of the tenancy and the details listed in the details section of the One Month Notice are correct. The Agent also submitted numerous written complaints, several audio recordings, and four warning letters to the Tenants in support of the One Month Notice.

Although the teleconference remained open for the 18-minute duration of the hearing, no one appeared on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence and oral testimony before me for consideration, as well as Branch records, I am satisfied that the Tenants received the One Month Notice on April 21, 2022, after it was posted to the door of the rental unit on that same date.

Section 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As the Tenants

failed to attend the hearing of their own Application, the Tenants' Application is therefore dismissed without leave to reapply. As a result, I decline to grant the Tenants recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 55 of the *Act*.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the above, I must now turn my mind to whether the One Month Notice issued by the Landlord complies 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.

The One Month Notice in the documentary evidence before me is signed and dated by an agent for the Landlord, gives the address of the rental unit, states the effective date of the One Month Notice and the reasons for ending the tenancy, and is in the approved form. As a result, I find that the One Month Notice complies with section 52 of the *Act*. I am also satisfied based on the undisputed documentary evidence and affirmed testimony before me from the landlord and or their agents, that the Landlord has cause to end the tenancy under section 47 of the *Act* for the reasons set out in the One Month Notice. I therefore find that the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

Although the effective date of the One Month Notice has passed, rent for the month of August has been paid according to the affirmed testimony of the Agent at the hearing. As a result, and pursuant to section 68(2)(a) of the *Act*, I grant the Landlord an Order of Possession for the rental unit effective at 1:00 P.M. on August 31, 2022.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee, pursuant to section 72(1) of the *Act*. As per the Agent's request at the hearing, and pursuant to section 72(2)(b) of the *Act*, the Landlord is therefore permitted to retain \$100.00 from the Security Deposit in recovery of this amount. Any remaining balance is to be dealt with in accordance with the *Act*.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on August 31, 2022, after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

Pursuant to section 72 of the *Act*, the Landlord is permitted to retain \$100.00 from the Security Deposit for recovery their filing fee.

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: August 22, 2022

Residential Tenancy Branch