



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, DRI-ARI-C, CNC, LRE, OLC, LAT, CNR, PSF**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks to the rental unit pursuant to section 70;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by family members.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct

submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The landlord confirmed receipt of the tenant's application and evidence by email. Based on the testimony I find the landlord duly served with all materials in accordance with sections 88, 89 and the Substituted Service decision of June 2, 2022.

The landlord testified that they served the tenant personally with their evidentiary materials on August 24, 2022. The tenant disputes that they were served with any materials and testified that on that date they made a complaint with the police about the conduct of the landlord. I do not find the tenant's submission to be credible, supported in documentary evidence or relevant to the issue of service. The landlord's testimony was supported by a written statement from a witness who was present at the time of service and I find it to be persuasive and credible. Based on the evidence I am satisfied that the tenant was served with the landlord's evidence on August 24, 2022 in accordance with section 88(a) of the *Act* and in any event I find they have been sufficiently served in accordance with section 71(2)(b) of the *Act* on that date.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages, The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in January 2021. The monthly rent at the start of the tenancy was \$1,550.00 payable on the first of each month. A security deposit of \$775.00 was collected and is still held by the landlord. The rental unit is a basement suite in a detached house.

The landlord submits that they issued a 1 Month Notice dated January 22, 2022, with an incorrect effective date of February 24, 2022, which they served on the tenants by posting on the rental unit door on January 23, 2022. The landlord submitted a signed witness statement from a family member who witnessed the service as well as photographs of the notice taped to the rental unit door. A copy of the notice was submitted into evidence.

The reasons provided on the notice for the tenancy to end are:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The landlord gave evidence that the tenant has engaged in violent conduct against other occupants of the rental property which required police intervention and that they have caused damage to the building by destroying doors and littering the property with garbage and refuse. The landlord submitted several photographs of the suite.

The tenant disputes that they were ever served with the 1 Month Notice. In a text message conversation with the landlord the tenant writes "you served it to the door but not me and I never received it yet". Throughout the hearing the tenant gave inconsistent and contradictory testimony, alternately stating that they have not been served with any notices to end tenancy and stating that they were aware of the existence of the notices and the landlord's intentions. When asked why they filed the present application to dispute notices to end tenancy, and stating on their application

that they were served with a 1 Month Notice on April 26, 2022, if they have not been served with any notices, the tenant testified that they were responding to correspondence from the landlord.

The landlord submits that any payment received after the effective date of the 1 Month Notice was clearly indicated to be for “use and occupancy only” and did not serve to reinstate the tenancy.

Analysis

As the parties disagree on the serve and very existence of a Notice to End Tenancy, I must first make a finding of credibility. I have considered the testimonies of the parties, their content and demeanor as well as whether it is consistent with the other evidence and circumstances of this tenancy.

Based on the totality of the evidence I find the tenant to be a wholly unreliable witness. Their testimony was self-serving, often contradicted their own earlier statements during the hearing, and is not supported in any of the documentary evidence of the parties. The tenant repeatedly failed to answer simple yes or no questions I put to them, instead giving lengthy testimony on their perceived grievances and matters unrelated to the issues at hand.

I do not find the tenant’s claim that they were never served with any notice to end tenancy to be credible or supported in the materials. The tenant’s submissions consist of complaints about the character of the landlord and their family members, conjecture about their motivations and theories that instead of serving them the 1 Month Notice by posting on the rental unit door, the landlord posted and immediately removed the notice to create the illusion of service.

The landlord’s submissions were supported in documentary materials including photographs and witness statements. They provided cogent, consistent testimony responding to the questions posed. Where the accounts of the parties differ, I find the landlord to have greater credibility

Section 88 of the *Act* provides that manners in which a document, including a notice to end tenancy, may be served on another party. In relevant portion the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

...

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

I accept the evidence of the landlord that they posted the 1 Month Notice of January 22, 2022 on the rental unit door on January 23, 2022. I am satisfied with the evidence including their testimony, photographs of the notice taped to the rental unit door and the witness statement. I do not find the tenant's claim that they were not served in accordance with the *Act* or at all to be credible or supported in any materials.

Pursuant to section 90(c) of the *Act* I find that the tenant is deemed served with the 1 Month Notice on January 26, 2022, three days after posting on the rental unit door.

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case the tenant had ten days from January 26, 2022, the date the notice is deemed served to file an application to dispute.

The tenant filed their present application, which includes an application to dispute a 1 Month Notice, on May 3, 2022. The tenant claims that they are disputing the 1 Month Notice despite testifying that they were not served with any such notice.

I therefore find the tenant was outside of the statutory timeline to file their application and are conclusively presumed, pursuant to section 47(5) of the *Act*, to have accepted the tenancy ends on the effective date of the notice.

Section 53 provides that if an effective date given on a notice to end tenancy is earlier than the earliest date permitted the date is automatically changed to the date that complies with the *Act* and tenancy agreement.

Section 47(2) provides that:

- (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.

As the parties agree that under the tenancy agreement rent is payable on the first of each month, I find that the earliest effective date of the 1 Month Notice of January 22, 2022 would be February 28, 2022. Accordingly, the effective date is deemed changed pursuant to section 53 to that date.

I find the 1 Month Notice conforms to the form and content requirements of section 52 as it is in the accepted form, is signed and dated by the landlord, identifies the address of the rental unit and gives the reasons for the tenancy to end. I accept the evidence of the landlord that the tenant has engaged in conduct that would be characterized as an unreasonable disturbance of others, serious jeopardy to the health, safety and lawful rights of others and significant risk to the property through their incidents of domestic abuse and wanton damage to the rental unit.

I accept the evidence that any subsequent payments from the tenant were clearly indicated to be for use and occupancy only and did not reinstate the tenancy.

Accordingly, I find the landlord is entitled to an Order of Possession. As the effective date of the notice has passed, I issue an order enforceable two days after service on the tenant.

As this tenancy is ending I find it unnecessary to make a determination on the balance of the application which pertains to relief for an ongoing tenancy. These portions of the application are dismissed.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 2, 2022

Residential Tenancy Branch