



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order of Possession for a One Month Notice to End Tenancy For Cause (the "One Month Notice") pursuant to Sections 47, 55 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Director and Program Manager attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenant with the One Month Notice on March 2, 2022 by posting the notice on the Tenant's door. The Landlord uploaded a Proof of Service form #RTB-34 attesting to service of the One Month Notice. I find the One Month Notice was deemed served on the Tenant on March 5, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenant by posting the notice on his door on May 12, 2022 (the "NoDRP package"). The Landlord uploaded a Proof of Service form #RTB-34 attesting to service

of the NoDRP package. I find that the Tenant was deemed served with the NoDRP package for this hearing three days after posting, on May 15, 2022, in accordance with Sections 89(2)(d) and 90(c) of the Act.

The Landlord served the Tenant with the Landlord's evidence on August 17, 2022 by posting the package on the Tenant's door. The Landlord uploaded a Proof of Service form #RTB-34 attesting to service of the Landlord's evidence. I find the Landlord's evidence was deemed served on the Tenant on August 20, 2022 according to Sections 88(g) and 90(c) of the Act.

Issue to be Decided

Is the Landlord entitled to an Order of Possession for a One Month Notice?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this tenancy began as a fixed term tenancy on November 1, 2018. The fixed term ended on April 30, 2019, then the tenancy continued on a month-to-month basis. Monthly rent is \$375.00 payable on the first day of each month.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property, and has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The effective date of the One Month Notice was April 30, 2022.

The Landlord provided further details of the causes to end this tenancy as:

Details of the Event(s):

The tenant has failed to address the cleanliness issues and the safety concerns in his suite.

Suite is reported as cluttered and dirty in the last 3 years.

- Pest issue on August 15, 2019, September 3, 2019 and February 24, 2022

- Suite was cluttered and not to safely bring in equipment by plumber for repair work on October 30, 2019; tenant was throwing garbage into the toilet

- Smoke detector was found covered on August 25, 2019, August 26, 2019, September 1, 2019 and September 3, 2019

- Fire alarm set off due to hot boxing unit on March 12, 2020

- Tenant was smoking in the common areas on September 14, 2020 and October 27, 2021 and had triggered the fire alarm

- Verbally abusive with staff on October 14, 2019, May 1, 2020, November 22, 2021 and December 29, 2021

The Landlord testified that the Tenant did not dispute their One Month Notice. The Landlord is seeking an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *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 re-apply.*

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:*

...

(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*
 - ...
- (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].*
- ...
- (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.*

The Landlord's One Month Notice was deemed served on March 5, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Landlord testified that the Tenant did not apply for dispute resolution after receiving the notice. I find pursuant to Section 47(5) of the Act that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was April 30 2022, and must vacate the rental unit by that date. I uphold the Landlord's One Month Notice.

I must consider if the Landlord is entitled to an Order of Possession. Section 55(2) of the Act reads 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) *the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Based on the Landlord's undisputed testimony, and the Tenant's failure to attend this hearing and present evidence relating to the One Month Notice, I find the time for making that application for dispute resolution has expired. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective two (2) days after service on the Tenant.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in 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 Act.

Dated: September 02, 2022

Residential Tenancy Branch