



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing was convened telephone conference as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for an Order of Possession for Cause dated March 1, 2022 ("1 Month Notice") pursuant to section 47 and 55 of the Act.

The Landlord's agents ("AN" and "JP") appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 11:00 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing ("NDRP") generated when the Landlord applied. I also confirmed throughout the duration of the hearing, which ended at 11:26 am, that the Tenant was not in attendance and that AN, JP and I were the only ones on the conference call. AN and JP were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AN stated the NDRP was served on the Tenant by registered mail on May 13, 2022. AN submitted the Canada Post tracking number for service of the NDRP on the Tenant. Based on the undisputed testimony of AN, I find that the NDRP was served on the Tenant in accordance with the provisions of section 89 of the Act. Pursuant to section 90 of the Act, I find the NDRP was deemed to have been received by the Tenant on May 18, 2022.

AN stated the Landlord's evidence was served on the Tenant's door on August 17, 2022. Based on the undisputed testimony of AN, I find the Landlord's evidence was served on the Tenant in accordance with the provisions of section 88 of the Act. pursuant to section 90 of the Act, I find the Landlord's evidence was deemed to have been received by the Tenant on August 20, 2022.

AN stated the Landlord did not receive any evidence from the Tenant for this proceeding.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

AN submitted into evidence a copy of the tenancy agreement and addenda between the Landlord and Tenant. AN stated the tenancy commenced on November 1, 2018, for a fixed term ending April 30, 2019, with rent of \$375.00 payable on the 1st day of each month. AN stated the Tenant was not required to pay a security deposit. AN stated the Tenant has not vacated the rental unit and that the rent for September 2022 has been paid.

AN stated the Landlord served the Tenant with the 1 Month Notice on the Tenant's door on March 2, 2022. AN submitted a signed and witnessed Proof of Service on Form RTB-34 to corroborate her testimony on service of the 1 Month Notice on the Tenant. I find the 1 Month Notice was served on the Tenant in accordance with the provisions of section 88 of the Act. The 1 Month Notice stated that reasons for ending the tenancy for cause were:

- Tenant or a person permitted on the property by the tenancy has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The 1 Month Notice provided the following details on the causes for ending the tenancy:

The tenant has failed to address the cleanliness issues in his suite and no improvements observed to the suite condition.

September 3, 2021: staff noticed a strong sour smell from the first floor hallway, specifically from the tenant's suite

September 26, 2021: staff attempted to enter the suite for a suite inspection but observed that there were needles and garbage all over the unit and decided it was not safe for staff to enter the suite

November 25, 2021: Staff went into the suite for a suite inspection and found uncapped needles and garbage on the floor, bed was covered in garbage and clothes, the suite smelt very sour, like rotting garbage with a vast amount of fruit flies throughout the suite

February 17, 2022: during a suite inspection, discarded sharps and drug paraphernalia were observed on the floor and throughout the suite

August 18, 2021: the tenant was seen on camera walking in the hallway with a large blade knife in his hand.

AN stated the Tenant's rental unit is uninhabitable and the odour from the suite and swarms of flies outside the Tenant's door is making it difficult for other residents of the residential property. AN stated the Tenant has behavioral issues and is a hoarder. AN stated has personally observed the inside of the Tenant's rental unit and has seen uncapped needles and drug paraphernalia laying around that make it hazardous for staff to enter it. AN stated the Tenant's bed is completely covered in clothing and other items which make it impossible for the Tenant to use the bed to sleep. AN stated there are unhygienic conditions in the unit and the volume of materials in the rental unit are a fire hazard. AN stated the Landlord gave the Tenant a letter dated January 22, 2022 in which the Tenant was warned about the unhygienic conditions of the rental unit and the Tenant has not taken any action to resolve these issues. AN stated that, as a result of the condition of the Tenant's rental unit, it unreasonably disturbs other residents of the residential property and it seriously jeopardizes the health and safety of other residents and the Landlord.

Analysis

Subsections 46(1)(d)(i) and 46(1)(d)(ii) and sections 47(2), 47(3), 47(4) and 47(5) of the Act state:

- 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]*.
- (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.

The 1 Month Notice was served on the Tenant's door on March 2, 2022. I find, pursuant to section 90 of the Act, that the Tenant was deemed to have received the 1 Month Notice on March 5, 2022. Pursuant to section 47(4) of the Act, the Tenant had until March 10, 2022 to make an application to dispute the 1 Month Notice. There is no evidence the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, being May 31, 2022.

Notwithstanding the Tenant is conclusively presumed to have accepted the tenancy has ended, I will nevertheless consider whether there was cause to end the tenancy pursuant to the 1 Month Notice.

AL provided undisputed testimony on the condition of the Tenant's rental unit. AL stated the rental unit was uninhabitable due to hoarding of items by the Tenant and the unhygienic conditions in it. AL stated that the strong odours emanating from the rental

unit into the hallway and the swarms of flies outside the Tenant's door in the common hallway is disturbing other residents of the residential property. AL stated the Tenant has uncapped needles and drug paraphernalia lying around the rental unit which are a hazard to the Landlord's staff. AL stated the Landlord has given the Tenant a warning letter regarding the unhygienic conditions of the rental unit but the Tenant has not taken any action to resolve these issues. I find, based on the undisputed testimony of AN, that the Tenant is unreasonably disturbing and seriously jeopardizing the health and safety of other occupants and the staff of the Landlord. As such, I find the Landlord has satisfied, on a balance of probabilities, that the Tenant has breached subsections 47(1)(d)(i) and 47(1)(d)(ii) of the Act and there was cause for ending the tenancy pursuant to the 1 Month Notice.

Sections 55(2) through 55(4) of the Act state:

- 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:
- (a) a notice to end the tenancy has been given by the tenant;
 - (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;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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.

[emphasis in italics added]

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. The Tenant has not vacated the rental unit even though the tenancy ended on the effective date of the 1 Month Notice, being April 30, 2022. The Tenant has paid for occupation of the rent until September 30, 2022 and AN advised the Landlord is agreeable to the Tenant moving out on or before September 30, 2022. Based on the foregoing, pursuant to section 55(4)(a) of the Act, I grant the Landlord an Order of Possession of the rental unit to the Landlord requiring the Tenant to deliver vacant possession of the rental unit by 1:00 pm on September 30, 2022, after being served with a copy of this decision and attached Order by the Landlord.

Conclusion

I order that the Tenant deliver vacant possession of the rental unit to the Landlord and grant the Landlord an Order of Possession effective at 1:00 pm on September 30, 2022, after service of a copy of this decision and attached Order on the Tenant. This Order of Possession may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 6, 2022

Residential Tenancy Branch