



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLACKSTAR POOL III LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The three tenants, tenant DAB ("female tenant"), "tenant RM," and "tenant DB," did not attend this hearing, which lasted approximately 59 minutes. The landlord's lawyer and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord called two witnesses, "witness HG" and "witness SA," who were excluded from the outset of the hearing, called in later to testify, and left the hearing after their testimony was completed.

This hearing began at 9:30 a.m. and ended at 10:29 a.m. I monitored the teleconference line throughout this 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's lawyer, the landlord's agent, the landlord's two witnesses, and I were the only people who called into this teleconference.

All hearing participants confirmed their names and spelling. The landlord's agent stated that she is a property manager for the landlord company ("landlord") named in this application and that she had permission to speak on its behalf.

The landlord's lawyer stated that he had permission to speak on the landlord's behalf. He said that the landlord owns the rental unit, and he provided the rental unit address. He provided his email address for me to send this decision to the landlord after the hearing. He identified himself as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. During this hearing, all hearing participants separately affirmed that they would not record this hearing.

I explained the hearing process to the landlord's lawyer and the landlord's agent. They had an opportunity to ask questions. They did not make any accommodation requests.

The landlord's lawyer stated that the three tenants were each separately served with a copy of the landlord's application for dispute resolution, notice of hearing, and first evidence package, all by way of registered mail. He said that the female tenant and tenant RM were served on August 24, 2022, and tenant DB was served on August 22, 2022. The landlord provided three Canada Post receipts and tracking reports with this application. The landlord's lawyer confirmed all three Canada Post tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the female tenant and tenant RM were deemed served with the landlord's application on August 29, 2022, and tenant DB was deemed served with the landlord's application on August 27, 2022, five days after their registered mailings.

The landlord's lawyer stated that the three tenants were each separately served with a copy of the landlord's second evidence package on September 16, 2022, by way of registered mail. The landlord provided three Canada Post receipts and tracking reports with this application. In accordance with sections 89 and 90 of the *Act*, I find that the three tenants were deemed served with the landlord's second evidence package on September 21, 2022, five days after their registered mailings. I informed the landlord's lawyer that I could not consider the landlord's second evidence package at this hearing or in my decision because it was deemed received late, less than 14 days prior to this hearing date on October 3, 2022, not including the service or hearing dates, contrary to Rule 3.14 of the RTB *Rules*.

The landlord's lawyer asked that the landlord's second evidence package be considered because the landlord was waiting for information from the tenants before serving it, it was outside of the landlord's control, and it could be admitted as late evidence. He asked whether an adjournment could be granted to provide additional time to serve the evidence. I informed the landlord's lawyer that my decision had been made and an

adjournment would not be granted because the landlord had ample time to serve the evidence in a timely manner, as this application was filed by the landlord on August 5, 2022, and this hearing occurred on October 3, 2022, almost two months later. He confirmed his understanding of same.

The landlord's agent said that she served the female tenant and tenant RM with a copy of the landlord's One Month Notice to End Tenancy for Cause, dated June 20, 2022 ("1 Month Notice") on the same date, by way of posting to the rental unit door. The landlord's lawyer said that tenant DB was served with the landlord's 1 Month Notice on June 21, 2022, by way of registered mail. The landlord provided a Canada Post receipt and tracking report, and the landlord's lawyer confirmed the tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that the female tenant and tenant RM were both deemed served with the landlord's 1 Month Notice on June 23, 2022, three days after its posting, and tenant DB was deemed served with the 1 Month Notice on June 26, 2022, five days after its registered mailing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove the name of the landlord's law firm as a landlord-applicant party. The landlord's lawyer confirmed that the landlord owns the rental unit and he and the landlord's law firm are only agents for the owner.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's lawyer stated the following facts. This tenancy began on November 26, 2020. A written tenancy agreement was signed by both parties. A security deposit of \$775.00 was paid by the tenants and the landlord continues to retain this deposit. The

female tenant and tenant RM continue to reside in the rental unit. Tenant DB never moved into the rental unit.

The landlord's agent stated that monthly rent in the current amount of \$1,573.25 is payable on the first day of each month.

The landlord's lawyer confirmed that the 1 Month Notice has an effective move-out date of July 31, 2022, and it was issued to the tenants for the following five reasons, as indicated on the notice:

- *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.*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord's lawyer stated the following facts. The tenants have not disputed the landlord's 1 Month Notice, so there is a conclusive presumption against them. The tenants violated a material term of the addendum to the tenancy agreement, as there is no smoking permitted at the rental unit or the property. The landlord has received numerous complaints regarding the tenants smoking at the rental property. The landlord smelled smoke inside the rental unit. The tenancy agreement prohibits pets without a pet damage deposit, but the tenants have two cats at the rental unit. The landlord's requests have been rebuffed and no pet damage deposit has been paid by the tenants. The tenants' electricity was turned off by their provider, so they have plugged an extension cord into the common areas of the rental property. The tenants have used electrical tape to cut the cord, split it, and band it together, which is unsafe conduct. The tenants have removed the smoke detector from their rental unit, which is a fire hazard. The tenants have stored materials on their deck, which is a breach. There has been an altercation at the rental unit, involving the landlord's security guard who removed the extension cord from the socket, and the police were called. A letter, dated June 22, 2022, which is 65-pages long and includes photographs, was referenced in the details of cause on the 1 Month Notice, and was provided to the tenants with copies of the 1 Month Notice.

The landlord's witness HG testified regarding the following facts. He is security concierge for the landlord at the rental property and patrols the building and the parking areas. He has patrolled the 22nd and 23rd floors of the rental building. He does not recall what happened on September 7, 2022, but he was working on that date on the 23rd floor where the rental unit is located. He passed the video of what occurred and a message to the landlord's manager. His colleague told him to unplug the cord at the rental property. He had to go and unplug the cord that was coming out of the rental unit on the 23rd floor and was plugged into an outlet on the 22nd floor. He also took photographs of the cord and provided it to the landlord.

The landlord's witness SA testified regarding the following facts. He is a security guard at the rental property. He knows the tenants who live at the rental unit. On September 9, 2022, he went to remove an extension cord, which was coming out of the tenant's rental unit, and using electricity from the rental building lobby. A male occupant came out of the rental unit and started shouting at witness SA, to not remove the cord. Witness SA told the male tenant that he was a security guard. The male tenant tried to hit witness SA and ran behind him. Witness SA called 911 and went back to the ground floor. The police came and gave witness SA a file number. The police gave the cord to witness SA and told him not to give it back to the tenants.

The landlord's lawyer stated that the landlord believes that tenant RM was involved in the above altercation with witness SA, on September 9, 2022, but the landlord has not yet received the police report, so cannot be sure. The male occupant came out of the rental unit when the altercation occurred.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. As I have found one of the five reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

I accept the undisputed evidence of the landlord at this hearing, as the tenants did not attend. I accept the undisputed affirmed testimony of the landlord's agent and the landlord's two witnesses, and the submissions from the landlord's lawyer. I accept the undisputed detailed first written evidence package and the landlord's 1 Month Notice. I find that the tenants and occupants permitted on the property by the tenants, have significantly interfered with and unreasonably disturbed the landlord and other occupants at the rental property. I find that the landlord provided a detailed first

evidence package with documents and photographs, including a 65-page letter, dated June 22, 2022, as referenced on the 1 Month Notice itself. I find that the landlord's lawyer and the landlord's two witnesses explained these details during this hearing, as noted below.

I find that the tenants and occupants permitted on the property by the tenants engaged in aggressive, unsafe, inappropriate, and threatening behaviour at the rental property. I find that this caused significant interference and unreasonable disturbance to the landlord and other occupants at the rental property. The landlord's security guard agents, witness HG and witness SA, have witnessed this behaviour. I find that the behaviour of the two tenants (the female tenant and tenant RM) and occupants permitted on the property by the tenants, causes fear, concern, and safety issues for the landlord and other occupants at the rental property. The landlord received complaints from other occupants, the landlord's two witnesses have observed unsafe and threatening behaviour from the rental unit, and the police have been called. A male occupant from the tenants' rental unit was involved in a recent aggressive threatening altercation with the landlord's agent, witness SA, on September 9, 2022, after the 1 Month Notice was issued to the tenants. The tenants have removed the smoke detector in their rental unit, causing a fire hazard and safety concerns. The tenants have been using an unsafe altered extension cord to obtain electricity power from common areas of the rental building. The above pattern of unsafe behaviour has been ongoing, even after the 1 Month Notice was served to the tenants. The landlord provided written breach letters and photographs to the tenants, regarding their inappropriate behaviour. The landlord provided copies of the above documents in the first evidence package for this hearing.

The tenants have not made an application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenants to take this action within ten days led to the end of this tenancy on July 31, 2022, the effective date on the 1 Month Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by July 31, 2022.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. I grant the landlord's application and issue an Order of Possession to the landlord, effective two (2) days after service on the tenants, pursuant to section 55 of the *Act*. The effective date of July 31, 2022, on the notice, has long passed.

Neither the landlord's lawyer, nor the landlord's agent, indicated whether the tenants have paid full rent to the landlord, after the effective date of the notice. Regardless, I find that the landlord has not waived its rights to enforce the 1 Month Notice, if it accepted rent from the tenants after the effective date on the notice. The landlord did not cancel this hearing, withdraw this application, or cancel the 1 Month Notice. The landlord proceeded to this hearing and pursued an order of possession against the tenant, indicating that it wanted an end to this tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord's application is granted.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). The tenant(s) must be served with a copy of this Order. Should the tenant(s) or anyone 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.

I order the landlord to retain \$100.00 from the tenants' security deposit of \$775.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$675.00 is to be dealt with at the end of this tenancy in accordance with section 38 of 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: October 03, 2022

Residential Tenancy Branch