



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1121695 BC LTD
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* ("the *Act*") for an Order of Possession for an Order of Possession for cause, pursuant to section 55; and authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent, CH ("landlord"), attended the hearing by way of conference call, the tenant did not. I waited until 9:44 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording the dispute resolution hearing by participants, and that the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. The landlord confirmed that they understood.

The landlord testified that a copy of the 1 Month Notice dated July 1, 2022 was placed in the tenant's mailbox on the same date. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on July 3, 2022, 3 days after posting.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord testified that they had served the tenant this application by posting it on the tenant's door on September 15, 2022.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

89 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

In this case the landlord served the tenant by attaching a copy of the application to the tenant's door. In accordance with sections 89(2) and 90 of the Act, I find the tenant deemed served with the landlord's application for an Order of Possession on September 18, 2022, 3 days after posting. I do, however, note that the service of the application does not comply with section 89 (1) of the Act, and as such I can only deal with the

landlord's application for an Order of Possession. The landlord's application to recover the filing fee is dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on April 1, 2019, with monthly rent set at \$780.00, payable on the first day of the month. The landlord still holds the security deposit of \$375.00.

The landlord served the tenant with a 1 Month Notice dated July 1, 2022 for the following reason:

1. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord testified that the tenant sublet the rental unit to their friends without the landlord's permission. The landlord provided a copy of a text message from the tenant dated March 6, 2022 informing the landlord that they were ending their tenancy, but that their friend would be staying.

The landlord testified that even though the tenant stated in their text message that they were ending the tenancy in March 2022, the tenant never gave formal notice that they were doing so. Instead, the tenant changed the locks, and provided keys to their friends who are now staying in the rental unit, and paying rent to the tenant. The landlord testified that the tenant has been observed visiting their friends at the rental unit. The landlord testified that they have not received any rent from the tenant's friends, but testified that the tenant continued to pay rent to the landlord until August 2022. The landlord is requesting an Order of Possession as the landlord never agreed to the sublet or assignment of the rental unit to the tenant's friends.

Analysis

Based on the undisputed evidence and testimony before me, I'm satisfied that the tenant had sublet the rental unit without the landlord's permission.

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Section 47 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. I find that the tenant has failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 1 Month Notice, August 31, 2022.

In this case, this required the tenant and anyone on the premises to vacate the premises by August 31, 2022.. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Conclusion

I find that the landlord is entitled to an Order of Possession. I find that the landlord's 1 Month Notice is valid and effective as of August 31, 2022.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

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 14, 2022