



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 and her Legal Counsel 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, her Legal Counsel, and I were the only ones who had called into this teleconference. The Landlord and Legal Counsel were given a full opportunity to be heard, to make submissions, and to call witnesses.

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

The Landlord personally served the One Month Notice on May 17, 2022. The Landlord uploaded a witnessed Proof of Service Notice to End Tenancy #RTB-34 attesting to personal service of this document. I find that the One Month Notice was served on the Tenant on May 17, 2022 pursuant to Section 88(a) of the Act.

The Landlord applied for authorization to serve the Notice of Dispute Resolution Proceeding package (the "NoDRP package") for this hearing by substitutional service by email. That application was granted on June 30, 2022. The Landlord served the NoDRP

package and evidence by email on June 16, 2022. The Landlord uploaded a copy of the sent email in her documentary evidence. I find the Tenant was sufficiently served with the NoDRP package and evidence on June 19, 2022 in accordance with Section 71 of the Act, and pursuant to Sections 43 and 44 of the *Residential Tenancy Regulation* (the "Regulation").

The Landlord served additional evidence on September 27, 2022 and October 9, 2022 by email. The Landlord uploaded a copy of the sent email in her documentary evidence. I find the Tenant was sufficiently served with the additional evidence on September 30, 2022 and October 12, 2022 in accordance with Section 71 of the Act, and pursuant to Sections 43 and 44 of the Regulation.

Issue to be Decided

Is the Landlord entitled to an Order of Possession for the 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 tenancy agreement was uploaded in this matter. The Landlord testified that this periodic tenancy began on November 1, 2019. Monthly rent is \$350.00 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, has seriously jeopardized the health or safety or a lawful right or interest of another occupant or the landlord, the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord, or has caused extraordinary damage to the unit or property. The effective date of the One Month Notice was June 30, 2022.

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

*Feb 2022 : [Tenant] damaged the Gate # gate at [residential property].
Mar 2022 : [Tenant] cut trees from neighbours lot and Crown Land at [residential property].
May 2022 : [Tenant] threatening neighbours and arrested at [residential property]*

To permit the Tenant time to find alternative housing, and to clean and remove cut trees from private land, the Landlord seeks an Order of Possession for May 31, 2023.

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.

This hearing was conducted pursuant to 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*

...

- (e) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
...
 - (ii) *has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
 - (iii) *has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- (f) *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*
...
 - (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 Landlord personally served the One Month Notice on May 17, 2022. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act.

The Tenant did not dispute the One Month Notice within the 10 days after receipt of the notice. I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

I must consider if the Landlord is entitled to an Order of Possession for cause. Section 55 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*

...

I previously found that the Tenant did not apply to dispute the One Month Notice, and now the time for making that application has expired. The Landlord asked for a tenancy end date of May 31, 2023 and in accordance with Section 68(2)(a) of the Act, I Order the tenancy end date will be May 31, 2023. Pursuant to Section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession which will be effective on May 31, 2023 at 1 p.m.

The Landlord sought additional Orders at the end of the hearing; however, this application was solely for an Order of Possession. Rules of Procedure 2.2 and 6.2 state:

2.2 Identifying issues on the Application for Dispute Resolution: *The claim is limited to what is stated in the application.*

6.2 What will be considered at a dispute resolution hearing: *The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

The Landlord's application was for an Order of Possession for cause, and I decline to allow the Landlord to amend her application in this matter.

Conclusion

The Landlord's application is granted.

The Landlord's One Month Notice is upheld, and I grant an Order of Possession to the Landlord effective on May 31, 2023 at 1:00 p.m. The Landlord must serve this Order on the Tenant as soon as possible. Should the Tenant 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 Act.

Dated: October 12, 2022

Residential Tenancy Branch