



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on September 29, 2022, wherein the Landlord sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on September 6, 2022 (the "Notice").

The hearing of the Landlord's Application was scheduled for 11:00 on November 10, 2022. Only the Landlord's Project Operations Manager, B.H. and the Senior Manager of Housing and Programs, J.L. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.m. Additionally, 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 Representatives and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. B.H. testified that they served the Tenant with the Notice of Hearing and the Application on October 12, 2022 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 17, 2022 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's Representatives' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Name

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) (RTA) 57(3)(c) (MHPTA) which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Landlord named B.H. and J.L., as Landlord. A review of the tenancy agreement confirms the Landlord is a society. I therefore Amend the Application to correctly name the Landlord.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

B.H. confirmed that this tenancy began August 8, 2016. Monthly rent is \$375.00 and the Tenant paid a \$187.50 security deposit.

The Notice was posted to the rental unit door on September 6, 2022. The reasons cited on the Notice were as follows:

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

The Notice informed the Tenant she had 10 days in which to apply to dispute the Notice failing which she would be conclusively presumed to have accepted the end of the tenancy and would need to move out. B.H. testified that the Tenant did not file for dispute resolution.

B.H. further testified as to the circumstances giving rise to the Notice. She stated that the Tenant's boyfriend has been involved in numerous incidents where he has assaulted other guests/residents, using a knife on more than one occasion and which have resulted in criminal charges. The Landlord also submitted video footage of the Tenant's boyfriend assaulting others, as well as one video where the Tenant is involved in an assault.

B.H. further testified that due to the criminal charges against the Tenant's boyfriend, he is currently prohibited from being at the rental building in which the rental unit is located. Despite this, the Tenant continues to allow her boyfriend to be at the unit.

The Landlord also submitted video footage of the Tenant vandalizing the elevator in the rental building. B.H. confirmed that she has tried to speak to the Tenant about her behaviour as well as her boyfriend's behaviour both in person and in writing and the Tenant's response is that he is her partner and he will be there if she wants him to be there. She confirmed the last time she spoke to the Tenant was two days prior to the hearing relating to another matter.

Analysis

The Landlord seeks to end the tenancy for Cause pursuant to section 47 of the *Act*, which reads as follows.

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b)the tenant is repeatedly late paying rent;

(c)there are an unreasonable number of occupants in a rental unit;

(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

(iii)put the landlord's property at significant risk;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(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;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(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.

I accept B.H.'s testimony that they served the Notice on the Tenant by posting to the rental unit door on September 6, 2022. Section 90 of the *Act* provides that documents served in that manner are deemed served three days later such that I find the Tenant was duly served as of September 9, 2022. I find the Notice complies with section 52 of the *Act* in terms of form and content.

I accept B.H.'s testimony that the Tenant failed to apply to dispute the Notice. Pursuant to section 47(5) the Tenant is therefore conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit. On this basis I grant the Landlord's request for an Order of Possession effective two (2) days after service on the Tenant. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court. The Tenant is reminded that any costs incurred by the Landlord to enforce the Order may be recoverable from the Tenant.

I wish to point out that even though I have granted the Landlord's request pursuant to section 47(4) of the *Act*, I would have granted the Landlord's request to end the tenancy for the reasons cited on the Notice. I find the Tenant and her boyfriend have significantly interfered with and unreasonably disturbed other occupants, as well as *seriously* jeopardizing the health and safety of other occupants of the rental building. I further find they have been violent to other residents and guests of the rental property. I am persuaded by B.H.'s testimony and the video footage provided by the Landlord that this has occurred on more than one occasion. There is no place for such violence and aggression in a tenancy and this tenancy must end to protect others.

Conclusion

The Landlord's request for an Order of Possession for cause is granted.

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: November 10, 2022

Residential Tenancy Branch