



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant: CNC, OLC, FFT
Landlord: OPC, FFL

Introduction

This hearing was reconvened from a hearing on October 25, 2022 regarding the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 15, 2022 (the "One Month Notice") pursuant to section 47;
- an order that the Landlord comply with the Act, the regulation, or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord applied for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The original hearing resulted in an interim decision dated October 25, 2022 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Landlord's agent MI attended this reconvened hearing, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. JK also attended this hearing to testify as a witness for the Landlord.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until approximately 12:07 pm in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding for the reconvened hearing. I used the teleconference system to confirm that MI, JK, and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Evidence

MI testified that she sent the Landlord's evidence to the Tenant as required by the Interim Decision. MI also confirmed receipt of the Tenant's evidence via email. Based on MI's testimony, I find the Tenant was sufficiently served with the Landlord's evidence pursuant to section 71(2) of the Act.

Preliminary Matter – Tenant's Non-attendance

At the original hearing, I had confirmed the email addresses of the parties, which were also noted on the cover page of the Interim Decision. Records indicate that the Residential Tenancy Branch (the "RTB") sent copies of the notice of dispute resolution proceeding and the Interim Decision to the parties via email on October 26, 2022. I find the Tenant was sufficiently served with notice of this reconvened hearing by the RTB in accordance with section 71(2) of the Act.

In the Interim Decision, I had reminded the parties that attendance for the reconvened hearing is mandatory as per Rule 7.10 of the Rules of Procedure, which states:

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

Rule 7.3 of the Rules of Procedure further states:

7.3 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.

As I have found the Tenant to be duly served with notice of this reconvened hearing and the Tenant has not attended to provide submissions with respect to his own application, I dismiss the Tenant's claims to seek an order that the Landlord comply with the Act, the regulation, or tenancy agreement and to recover the filing fee for the Tenant's application without leave to re-apply.

I directed the hearing to continue in the Tenant's absence to determine whether the Tenant is entitled to cancel the One Month Notice and if not, whether the Landlord is entitled to an Order of Possession for the rental unit.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?
3. Is the Landlord entitled to recover the filing fee for the Landlord's application?

Background and Evidence

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

This tenancy commenced on March 1, 2021 and is month-to-month. Rent is \$2,030.00 due on the first day of each month. The Tenant paid a security deposit of \$1,000.00 which is held by the Landlord.

Copies of the One Month Notice have been submitted into evidence. The One Month Notice is signed by JK on behalf of the Landlord and has an effective date of August 31, 2022. It states the following reasons for issuing the notice:

- Tenant is repeatedly late paying rent
- Tenant or a permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

- Tenant or a permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a permitted on the property by the tenant has put the landlord's property at significant risk
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent

The One Month Notice includes the following additional details of cause:

TENANT IS REPEATEDLY PAYING RENT LATE. TENANT HAS BREACHED TENANCY AGREEMENT OF CLAUSE #13 SUSPICIOUS USE OF DEBIT CARDS FOR OTHER UNITS RELATED TO SHORT TERM RENTALS THAT ARE NOT PERMITTED UNDER THE TENANCY AGREEMENT.

The Tenant's application indicates that the Tenant received a copy of the One Month Notice in person on July 15, 2022.

MI testified she took over as property manager of the building in July 2022. MI testified the Tenant has been repeatedly late with paying rent. MI testified that as at the date of this hearing, the Tenant has not paid any rent for the month of November 2022. MI testified the Tenant owes \$490.00 from October rent.

MI referred to a record of the Tenant's rent history from March 1, 2021 to September 7, 2022 (the "Rent Record") submitted into evidence. MI testified the Tenant had provided a pre-authorized payment method that gets rejected every month due to insufficient funds. The Rent Record shows the Tenant paid rent since March 2022 as follows:

- March rent was paid on March 17, 2022
- April rent was paid on April 7, 2022
- May rent was paid in installments on May 5, 9, and 19, 2022
- June rent was partially paid on June 1, 2022
- July rent was paid on July 15, 2022
- August rent was partially paid on August 12, 2022
- September rent had not been paid by September 7, 2022

MI testified the Tenant has also been listing other units in the building on Airbnb. MI testified that she had seen people in the building with suitcases and had asked if they were moving out. MI testified she was told that they had rented a unit in the building through Airbnb. MI testified it was later discovered that the Tenant was paying for

several units which were being listed on Airbnb. MI testified there was one particular unit where the tenant on the lease had changed his mind after signing the lease and did not live in the unit. MI testified this unit was being used by the Tenant for Airbnb under that other individual's name.

JK testified she had helped to cover for MI as property manager while MI was on vacation in July 2022. JK testified it was discovered that several units in the building were empty and were matched to ads listed on Airbnb. JK testified it was further discovered that the Tenant's debit card was linked to payments received for those units. JK testified it is believed that the Tenant was making money from listing the units for short-term rentals, which is not allowed in the building. JK confirmed the previous property manager before MI had left on June 30, 2022.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 47(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 47(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 52, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy 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,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

Section 47(2) further requires that the effective date of a landlord's notice under section 47 must be:

- (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.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in sections 52 and 47(2) of the Act.

Based on the Tenant's application, I find the Tenant was served with a copy of the One Month Notice in person on July 15, 2022, in accordance with section 88(a) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. Therefore, the Tenant had until July 25, 2022 to dispute the One Month Notice. Records indicate that the Tenant submitted this application on July 18, 2022. I find the Tenant made his application within the 10-day dispute period required by section 47(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Sections 47(1)(b), 47(1)(d) and 47(1)(i) of the Act state as follows:

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:

[...]

(b) the tenant is repeatedly late paying rent;

[...]

(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;

[...]

(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*]; [...]

Regarding repeatedly late payment of rent under section 47(1)(b) of the Act, Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent states as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the evidence before me, I find the Tenant was late paying rent for the months of March, April, June (rent not paid in full), and July 2022. I find the Tenant has been late with payment of rent more than three times prior to the issuance of the One Month Notice. I find the Tenant has not attended this hearing to explain why rent was not paid on time. I find the Tenant continued to pay rent late in the months following the issuance of the One Month Notice. I am therefore satisfied that the Landlord has proven cause on a balance of probabilities under section 47(1)(b) of the Act.

Under these circumstances, I find it is not necessary for me to also consider whether the Landlord has established cause under sections 47(1)(d) and 47(1)(i) of the Act.

The Tenant's claim to dispute the One Month Notice is dismissed without leave to re-apply.

2. Is the Landlord entitled to an Order of Possession?

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the One Month Notice to comply with the requirements of section 52 and having dismissed the Tenant's claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act.

I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

3. Is the Landlord entitled to recovery of the filing fee?

As the Landlord has been successful in obtaining an Order of Possession, I grant the Landlord's claim for recovery of the \$100.00 filing fee for the Landlord's application under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct \$100.00 from the Tenant's \$1,000.00 security deposit in full satisfaction of the filing fee awarded.

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective two (2) days after service upon the Tenant. The Tenant must be served with

this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in full satisfaction of the filing fee awarded. The balance of the Tenant's security deposit shall be dealt in accordance with the Act, the regulation, and the tenancy agreement.

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 09, 2022

Residential Tenancy Branch