



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR

Introduction

This hearing dealt with the Landlord's applications under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated June 26, 2022 (the "One Month Notice"), pursuant to section 55; and
- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 19, 2022 (the "10 Day Notice") pursuant to section 55.

The Landlord attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:41 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

I informed the Landlord that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord testified that copies of the notice of dispute resolution proceeding packages and evidence were sent to the Tenant by registered mail and email. The Landlord submitted a registered mail receipt with tracking number in support of service for the Landlord's application and evidence relating to the One Month Notice

(collectively, the “First Application”). That tracking number is referenced on the cover page of this decision. Tracking records show the package was delivered on August 11, 2022. As such, I find the Tenant was served with the First Application in accordance with sections 88(c) and 89(2)(b) of the Act on August 11, 2022. In addition, the Landlord submitted a copy of an email to the Tenant dated September 23, 2022, which includes information regarding the Landlord’s application relating to the 10 Day Notice (the “Second Application”). The Landlord’s evidence includes other email correspondence with the Tenant. I find the Tenant was sufficiently served with notice of the Second Application pursuant to section 71(2) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession under the One Month Notice?
2. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?

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 Landlord’s applications and my findings are set out below.

The Landlord explained that the Tenant is her adult daughter. The Landlord testified the parties entered into a written tenancy agreement on October 15, 2020, and the Tenant moved into the rental unit sometime that month. A copy of the tenancy agreement has been submitted into evidence. The agreement states that rent is \$500.00 per month due on the 21st day of each month. The Landlord explained the Tenant has a “Person with Disabilities” (PWD) designation and that the Tenant’s rent is deposited directly into the Landlord’s account. The Landlord was uncertain whether a security deposit was paid.

The Landlord testified the Tenant is aware that the Landlord is requesting an eviction. The Landlord stated the parties have been discussing this matter since June 2022. The Landlord confirmed she followed up with the Tenant a couple of days before the hearing.

The Landlord submitted a copy of the One Month Notice into evidence. It is dated June 26, 2022 and has an effective date of July 31, 2022. The One Month Notice states the following reasons for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant or a person 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 person permitted on the property by the Tenant has put the property at significant risk.
- Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
- Tenant or a person permitted on the property by 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 landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site/property/park.

The One Month Notice provides the following details of cause (portions redacted for privacy):

The Tennant took possession in October, 2020. At the time, the apartment had been freshly painted and was in excellent condition.

In the past 1.5 years, there have been numerous complaints from [management company] as follows: The Tennant stored garbage in the common areas, the Tennant allowed someone to camp in her parking space; there was an unregistered vehicle and garbage in her parking stall, etc.

A property inspection was conducted on June 26, 2022 with the Tennant's consent. The interior of the apartment has been destroyed and will require remodeling and repainting throughout. In addition to the damage, drug paraphernalia was found. On June 22, 2022, the police called the Landlord and stated that the Tennant had reported a man coming to her apartment and threatening her with a gun. The Landlord is concerned that the Tennant is putting herself and the other residents in danger. Photographs of the damage to the property are attached hereto.

The Landlord submitted a signed Proof of Service form indicating that a copy of the One Month Notice was sent to the Tenant via email on June 26, 2022. The Landlord submitted an email reply from the Tenant dated June 26, 2022 confirming receipt of the One Month Notice.

During the hearing, the Landlord stated she is seeking an Order of Possession of the rental unit as the situation is becoming a safety issue. The Landlord testified that others in the building feel endangered. The Landlord testified that the issues involving the Tenant include numerous complaints of stolen property, domestic violence, disturbances, as well as strata fines for garbage, nuisance, and illegal parking. The Landlord testified there have been unauthorized individuals residing in the rental unit, and that drug paraphernalia had been found. The Landlord submitted email correspondence with the strata property management company into evidence.

In addition, the Landlord submitted photographs to show the poor conditions of the rental unit. The photographs show the walls are covered in extensive graffiti. The Landlord testified that it would cost thousands of dollars to repaint and repair the rental unit. The Landlord testified there was also severe damage to the exterior door which had to be replaced.

The Landlord testified that she has encouraged the Tenant to get treatment, but the Tenant has refused help.

The Landlord explained she issued the 10 Day Notice in the hopes of proceeding by way of direct request, which would be a faster process, but it ended up being scheduled together with the First Application.

The Landlord confirmed the Tenant is still residing in the rental unit.

Analysis

1. Is the Landlord entitled to an Order of Possession under the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a notice to end tenancy for cause comply with section 52 of the Act, 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.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content. I find that the grounds for ending the tenancy stated in the One Month Notice correspond to those described in sections 47(1)(c), 47(1)(d), 47(1)(e)(i), 47(1)(e)(i)(ii), 47(1)(f), and 47(1)(g) of the Act.

I accept the Landlord's evidence that a copy of the One Month Notice was emailed to the Tenant on June 26, 2022 and the Tenant acknowledged receipt on the same day. Pursuant to section 71(2) of the Act, I find the Tenant was sufficiently served with the One Month Notice on June 26, 2022.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until July 6, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by July 6, 2022 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state 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

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was sufficiently served on June 26, 2022, the time for disputing the One Month Notice expired on July 6, 2022, and the Tenant did not make an application for dispute resolution. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

The effective date stated on the One Month Notice, or July 31, 2022, has already passed. Accordingly, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?

As I have already determined that the Landlord is entitled to an Order of Possession under the One Month Notice, I find it is not necessary for me to consider whether the Landlord is entitled to an Order of Possession under the 10 Day Notice.

Conclusion

The Landlord is successful in her claim for an Order of Possession under the One Month Notice.

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.

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 01, 2022

Residential Tenancy Branch