



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAREB HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) served to the tenant, an order of possession of the rental unit based upon an agreement by the tenant to vacate, and recovery of the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord's application was made on September 7, 2022, and the landlord was provided the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) from the RTB to serve the tenant on September 21, 2022. The landlord submitted evidence that she served the tenant with her application package by registered mail on September 22, 2022, which the tenant did not claim. The landlord said she was informed by the RTB that registered mail was the best way to serve documents due to being able to track the mail.

The tenant submitted that she only found out about the hearing when she received an email reminder from the RTB. The tenant explained that her sister cleaned her apartment while she was away and did not know where her mailbox key was for a few weeks. The tenant explained that she had brain damage, and mental and physical issues.

The tenant said she located her mailbox key near the end of September and that she did see a pick-up notice in the mailbox, but when she found her keys, the mail had been returned.

In this case, I find the tenant was sufficiently served the application package, which included the landlord's application and notice of hearing. I find failure to claim, or take reasonable measures to claim, registered mail is not sufficient to overcome the deemed served provisions of the Act. Apart from that, the Canada Post website tracking history said that the recipient was given a 10 day notice on September 29, 2022, to pick up the mail.

I therefore find the tenant was sufficiently served the landlord's application, on September 27, 2022, five days after it was mailed.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit pursuant to the 1 Month Notice and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on June 15, 2019, current monthly rent is \$710.50, and the tenant paid a security deposit and pet damage deposit of \$350 each. Filed in evidence was a copy of the written tenancy agreement.

The landlord submitted evidence that the tenant was served the Notice by registered mail on August 15, 2022. The 1 Month Notice was dated August 14, 2022 and listed an effective end of tenancy date of September 30, 2022. The landlord said the registered mail was returned to her, unclaimed. Filed in evidence was the 1 Month Notice and the Canada Post receipt and tracking number.

The causes listed on the Notice stated that the tenant or a person allowed on the property has put the landlord's property at significant risk and the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted that the tenant has continued to smoke in her rental unit, despite repeated written requests to stop. The landlord said the tenant told the landlord and others she will not stop smoking in her rental unit. The landlord filed two final written warning letters, dated in August 2022, as well as letters from other tenants who reported that the tenant told them she smoked inside the rental unit and did not care about the rules.

Tenant's response-

The tenant said that she did openly admit to smoking in her rental unit, but then she left the rental unit for several months, from March 25, 2022 through June 25, 2022. When she came back, she was broke and she had no money for smokes, groceries and gas. The tenant submitted she had to bum cigarettes from others.

The tenant submitted that when she first moved in, she was allowed to smoke outside the rental unit at a chair and table. The tenant said the landlord is lying.

The tenant submitted she suffers from PTSD, anxiety and agoraphobia, and began smoking inside when someone threatened her.

Analysis

I have reviewed all the evidence, which included registered mail receipts with tracking number showing the tenant was served the 1 Month Notice by registered mail. The evidence showed the registered mail was sent on August 15, 2022, and went unclaimed. I find failure to claim, or take reasonable measures to claim, registered mail

is not sufficient to overcome the deemed served provisions of the Act. I therefore find the tenant was sufficiently served the 1 Month Notice on August 20, 2022, five days after it was mailed. The Notice listed a move-out date of September 30, 2022.

I find the tenant provided inconsistent evidence that she could not locate her mailbox key because her sister cleaned while she was away, or at least before August 17, 2022. The tenant said that she was gone until June 23, 2022, could not find it for a few weeks, but then said she found it near the end of September.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, September 30, 2022.

The undisputed evidence also is that the tenant failed to make an application for dispute resolution to contest the Notice.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or September 30, 2022 and must vacate.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have reviewed the landlord's evidence and find they had sufficient cause to end the tenancy based upon the tenant's failure to comply with the term in the tenancy agreement prohibiting smoking inside the rental unit.

I therefore **order** the tenancy ended on September 30, 2022.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective two days after service of the order upon the tenant.

The tenant must be served the Order to be effective. If the tenant fails to voluntarily comply by vacating the rental unit immediately, the Order may be filed in the Supreme

Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenant.

I grant the landlord recovery of the filing fee of \$100. I grant the landlord a monetary order in the amount of \$100. The monetary order must be served to the tenant to be enforceable. In the alternative, I authorize the landlord to deduct \$100 from the tenant's security deposit in satisfaction of their monetary award of \$100, pursuant to section 72(2)(b) of the Act. If the landlord deducts \$100 from the tenant's security deposit, the monetary order is cancelled and is of no force or effect.

As I granted the landlord an order of possession based upon the 1 Month Notice, I did not consider the landlord's request for the order based upon a term in the tenancy agreement.

Conclusion

The tenancy has been ordered ended on September 30, 2022.

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenant.

The landlord is granted a monetary order of \$100 for recovery of the filing fee, and in the alternative, the landlord is authorized to deduct \$100 from the tenant's security deposit in satisfaction of their monetary award for the filing fee.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: December 08, 2022

Residential Tenancy Branch