



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 a landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on a undisputed 1 Month Notice to End Tenancy for Cause dated June 11, 2022 (1 Month Notice).

Landlord SP (landlord), the tenant and the daughter of the landlord, HP (daughter) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they had been served with the Notice of Hearing and application (Hearing Package) and had the opportunity to review the Hearing Package prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence on the landlords. In addition, the landlord provided a registered mail tracking number in evidence, which has been included on the cover page of this decision for ease of reference. According to the Canada Post registered mail tracking website, the landlord mailed the Hearing Package on June 14, 2022 and the tenant signed for and accepted the Hearing Package on June 18, 2022. Given the above, I find the tenant was sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing. The parties were informed that the decision will be emailed to both parties.

The landlord stated that they were not seeking the recovery of the cost of the filing fee for their application.

Issue(s) to be Decided

- Should the landlord be granted an order of possession based on an undisputed 1 Month Notice?

Background and Evidence

The parties confirmed that there was no written tenancy agreement between the parties. The parties agreed that the tenant has been paying rent of \$570 per month, which gets paid by the Ministry directly to the landlords since December of 2015.

The landlord and tenant confirmed that the tenant did not file an application to dispute the 1 Month Notice. The 1 Month Notice is dated June 11, 2022 and includes an effective vacancy date of July 22, 2022. The 5 causes listed are as follows:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk
- ☒ 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 Details of Cause(s) section of the 1 Month Notice indicates the following:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): 7/06/22 brief visual inspection by landlord noted the following: unauthorized replacement of plumbing and electrical fixtures, holes cut in drywall, damaged flooring, replacement of door with inappropriate one, oven panel missing, unsafe conditions created by ebike and motorcycle in living space, obvious hoarding with heating elements covered. Outside space also indicates hoarding, damage to siding, broken window, screen door and unauthorized and inappropriate replacement of carport storage locker door 8/06/22 8:00am most recent loud and disturbing altercation with other occupant. Neighbors report this is ongoing and frequent and police have attended 28/02/22 disturbance involved a bottle thrown through a window, potentially causing injury to anyone on the sidewalk beyond. RCMP attended. 29/10/21 other occupant reports Farren confiscated their phone; his hoarding impacting their quality of life

The tenant claims they did not file an application to dispute the 1 Month Notice as “emails will show why the 1 Month Notice is not valid.” The tenant was reminded that they did not submit any documentary evidence for my consideration including no emails submitted by the tenant. The daughter of the landlord, HP testified that they want the tenant to keep residing with them. The landlord testified the tenant is destroying the rental property due to hoarding behaviour and other damage to the rental unit.

During the hearing, the tenant, FM and the landlords’ daughter, HP were overheard having the following conversation during the hearing while the undersigned arbitrator was reviewing documentary evidence:

HP: “The room is a huge mess you know that?”

FM: “Don’t you say that!”

FM and HP were clearly not aware that I could hear all parties on the line throughout the hearing. As a result, I will address their comments in my analysis below.

The parties confirmed that money for use and occupancy has been paid for December 2022. The landlord confirmed that they are not seeking to evict their daughter, HP, only tenant FM.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession – There is no dispute that the tenants were served with the 1 Month Notice and did not file an application to dispute the 1 Month Notice. Section 47(5) of the Act applies and states:

47(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.**

[emphasis added]

Based on the above, I find the tenancy ended on the corrected effective vacancy date listed on the 1 Month Notice, which automatically corrects under section 53 of the Act from July 22, 2022 to **July 31, 2022**.

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. Considering that the tenant has not filed an application to dispute the 1 Month Notice and based on the testimony of HP and FM that I find confirms the poor condition of the rental unit, I find the tenants are conclusively presumed pursuant to section 47(5) of the *Act*, to have accepted that the tenancy ends on the corrected effective date of the 1 Month Notice. Also, section 55(2)(b) of the Act applies and states:

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;**
[emphasis added]

Given the above, **I grant the landlord an order of possession effective December 31, 2022 at 1:00 p.m.** This date and time have been used as money has been paid for use and occupancy of the rental unit for December 2022.

Conclusion

The landlords' application is fully successful. The tenancy for FM ended on July 31, 2022. The tenancy for HP continues.

The landlords have been granted an order of possession effective December 31, 2022 at 1:00 p.m., which must be served on tenant FM. This order must be served on the tenant, FM and may be enforced in the Supreme Court of British Columbia.

FM is cautioned that they can be held liable for all costs related to enforcement of the order of possession including, but not limited to, court costs and bailiff fees.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlords only for service on tenant FM.

As the landlords articulated that they are not seeking the eviction of their daughter, HP, the order of possession does not include HP, who may continue to reside in the rental

unit. The order of possession applies to tenant FM and another other occupant of the rental unit, excluding HP.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 15, 2022

Residential Tenancy Branch