



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC**

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 6, 2022 ("1 Month Notice") pursuant to section 47 of the Act.

Three agents ("JD", "CC" and "MC") for the Landlord appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 11:00 am and ending at 11:57 am. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing ("NDRP") generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance and that JD, CC and MC and I were the only ones on the conference call. The attendees were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing, a witness ("DG") was called to provide testimony on behalf of the Landlord.

JD stated she served the NDRP and the Landlord's evidence (collectively the "NDRP Package") by affixing it to the Tenant's door on June 16, 2022. MC stated she was present when JD affixed the NDRP Package on the Tenant's door. I find the NDRP Package was served in accordance with the provisions of section 88 and 89(2) of the Act. Pursuant to section 90, I find the NDRP Package was deemed to have been received by the Tenant on June 19, 2022, being three days after the NDRP Package was affixed to the Tenant's door.

JD stated the Landlord did not receive any evidence from the Tenant for this proceeding.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

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

JD submitted into evidence a copy of the tenancy agreement dated April 19, 2022 and addendum to the tenancy agreement. The tenancy agreement states the tenancy commenced on May 1, 2022 with rent of \$375.00 payable on the 1st day of each month. JD stated the Tenant has arrears of rent for the last two months.

JD stated the 1 Month Notice was affixed to the Tenant's door on September 6, 2022. MC stated she was present when JD affixed the 1 Month Notice to the Tenant's door. JD stated she was unaware of the Tenant making an application for dispute resolution to dispute the 1 Month Notice. The 1 Month Notice stated the causes for ending the tenancy were:

- 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
 - 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/property/park

The 1 Month Notice stated the details of the causes for ending the tenancy were contained in a Critical Incident Report ("CIR") dated August 31, 2022 that was included with the 1 Month Notice. The CIR stated a support worker ("TSW") called to let JD know he found a note on the door of the rental unit of another tenant ("Other Tenant") that included threats to the Other Tenant. TSW also informed JD that, when the Tenant was

outside the building smoking, he ran into the Other Tenant and the Other Tenant told TSW that if he got evicted, JD is going to get hurt.

JD submitted into evidence a copy of a note ("Note") that was left on the door of the Other Tenant. The Note states:

[First Name of Other Tenant]

So I heard you sold all my speakers and my battery charger. So where's my f..... money? I'm sorry about your bag, but I never stole it. [First name of JD] is a lying bitch. She has been trying to get me in trouble and kicked out for a long time. So if I don't get my money today, I will be forced to hurt yous (sic) an bc of me I allowed yous (sic) to hustle dope out of here. So if yous (sic) don't want to get robbed or beat up, I want my money today. And no more hustling out of here. Or a few guys will come and hurt yous (sic). If yous (sic) go Rat then yous (sic) might as well move out and away. I've been good to yous (sic). I've always hooked yous (sic) when it came to dope, but yous (sic) never hooked me up or nothing. Yous (sic) have been so cheap with me and I'm tired of it. Again sorry about your toy gun. I'm working for some serious guys now. They wanted to come kick your door in and hurt yous (sic). But I told them not to. So they are waiting. And if I don't get my money today. They will rob yous (sic) on welfare day and pension day and when they see yous (sic) outside every night or day.

JD stated there was an incident in which the Tenant permitted a person ("Guest") into the residential property and the Guest broke the entrance door to the Tenant's rental unit with a hammer.

JD called an employee ("DG") of the Landlord to provide testimony. DG stated he came on duty at 3:30 pm on August 31, 2022. DG stated that while doing his rounds at about 4:30 pm he observed the Tenant's door was severely damaged. DG stated he then reviewed the video surveillance recording to see what happened. DG stated he observed from the video that, at about 6:30 am, the Guest went to the Tenant's door and started booting the door with his foot. DG then observed the Guest take a hammer, and what looked like a gun, out of his backpack. DG stated he observed the Guest use the hammer to hit the Tenant's door. DG stated he observed the previous girlfriend of the Guest leave the Tenant's room. DG stated the Tenant's door required replaced because it was so badly damaged by the Guest. DG stated the Guest knows two or three other tenants who reside in the residential property. DG stated that, as there are

no security cameras in the area that the Guest entered the building, he could not see who let the Guest into the building.

Analysis

Subsections 47(1)(c) and 47(1)(d) and sections 47(2), 47(3), 47(4) and 47(5) of the Act state:

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

The 1 Month Notice was served on the Tenant's door on September 6, 2022. I find, pursuant to section 90 of the Act, that the Tenant was deemed to have received the 1 Month Notice on September 9, 2022, being three days after the date it was posted on the Tenant's door. Pursuant to section 47(4) of the Act, the Tenant had until September 19, 2022 to make an application to dispute the 1 Month Notice. There is no evidence that the Tenant made an application to dispute the 1 Month Notice. As a result, section 47(5) provides the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice. The 1 Month Notice stated the effective date for move out was October 6, 2022. The tenancy agreement provides the rent is payable by the Tenant on the 1st day of each month. Pursuant to section 47(2) of the Act, the earliest effective date for move out was October 31, 2022.

Section 53 of the Act states:

- 53(1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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
 - (a) that complies with the required notice period, or
 - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Pursuant to section 53(3), the effective date of the 1 Month Notice is deemed to be October 31, 2022.

Sections 55(2) through 55(4) of the Act state:

- 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:
- (a) a notice to end the tenancy has been given by the tenant;
 - (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;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (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.

[emphasis in italics added]

Based on the foregoing, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1)(d)(ii) of the Act.

Notwithstanding the Tenant is conclusively presumed to have accepted the tenancy has ended, I will nevertheless consider whether there was cause to end the tenancy pursuant to the 1 Month Notice.

The Note submitted by JD contains unambiguous threats to the Other Tenant that they will be “robbed or beat up” if the Other Tenant does not pay the Tenant the money they owe him. The Note also states that, if the Other Tenant doesn’t pay the Tenant the money, then several people will rob her on welfare and pension days. Based on the undisputed evidence submitted by the Landlord, I find the Tenant has seriously jeopardized the health, safety and lawful right and interest of another occupant of the residential property. As such, I find the Landlord has proven, on a balance of probabilities, that there is cause to end the tenancy early pursuant to subsection 47(1)(d)(ii) of the Act. As I have found cause to end the tenancy under subsection 47(1)(d)(ii) of the Act, it is unnecessary for me to consider whether there was cause to end the tenancy under sections 47(1)(c), 47(1)(d)(i), 47(1)(d)(iii) or 47(1)(f) of the Act.

I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 52 of the Act. Pursuant to section 47(5)(a), I find the tenancy ended on October 31, 2022. Based on the foregoing, pursuant to section 55(4)(a) of the Act, I grant the Landlord an Order of Possession of the rental unit requiring the Tenant to deliver vacant possession of the rental unit within two days of being served with a copy of this decision and attached Order by the Landlord.

Conclusion

I order that the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached Order by the Landlord. This Order of Possession 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: December 13, 2022

Residential Tenancy Branch