



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LLA INVESTMENTS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

The Application for Dispute Resolution (the Application) was filed by the Landlord under the Residential Tenancy Act (the Act), on July 13, 2022, seeking:

- an Order of Possession for cause.

The hearing was convened by telephone conference call at 9:30 AM on December 9, 2022, and was attended by the Agent for the Landlord (the Agent), who provided affirmed testimony. No one attended on behalf of the Tenant. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon at the hearing by the applicant(s). As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified in the hearing that the Notice of Dispute Resolution Proceeding package (NODRP), which includes the Application and the Notice of Hearing, as well as

the documentary evidence before me on behalf of the Landlord was sent to the Tenant by registered mail on August 12, 2022. The Agent provided me with the tracking number and stated that the Canada Post tracking system shows that the registered mail was delivered on September 12, 2022. I therefore find that the Tenant was deemed served on August 17, 2022, pursuant to section 90(a) of the Act, and subsequently received on September 12, 2022.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by email, as per their request, on July 28, 2022, so I asked the Agent why there was such a significant delay in sending it to the Tenant. The Agent stated that the original email was not received, and they had to attend the Branch to have it re-sent, resulting in the delay. Although section 59(3) of the Act and rule 3.1 of the Rules of Procedure states that the NODRP must be served on the respondent within three days of it being made available by the Branch, as I am satisfied that the NODRP was sent to the Tenant by registered mail and ultimately received well in advance of the hearing date and time, I therefore find that the Tenant was sufficiently served for the purposes of the Act and the Rules of Procedure on August 17, 2022, and September 12, 2022, pursuant to section 71(2)(b) of the Act.

I confirmed that the hearing details shown in the NODRP were correct and I note that the Agent had no difficulty attending the hearing on time using this information. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that 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. Based on the above and as there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled, despite the absence of the Tenant or an agent acting on their behalf.

The Agent stated that the documentary evidence before me was served on the Tenant in the same registered mail package as the NODRP, which I have already found above was deemed served on August 17, 2022, and received by the Tenant on September 12, 2022. I therefore accept this documentary evidence for review and consideration.

Although I have reviewed all documentary evidence before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be sent to them by email at the email address listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the Act?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the periodic (month-to-month) tenancy began on December 1, 2015.

The Agent testified that a One Month Notice to End Tenancy for Cause (the One Month Notice) was sent to the Tenant by registered mail at the rental unit address on July 29, 2022. A proof of service document was submitted for my review and consideration along with a copy of the registered mail receipt and a copy of the registered mail label addressed to the Tenant at the rental unit address. At the hearing, the Agent stated that the Canada Post tracking system shows that the registered mail was delivered on August 2, 2022.

The One Month Notice in the documentary evidence before me, dated May 7, 2022, has an effective date of July 1, 2022, and indicates that the reason for ending the tenancy is because:

- the tenant has allowed an unreasonable number of occupants in the unit; and
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has caused or is likely to cause damage to the landlord's property.

In the details of cause section of the One Month Notice it states that the Tenant has permitted dozens of people into the suite, that their spouse is living in the suite as an unpermitted occupant, that the Tenant is selling drugs from the rental unit, and that other occupants of the building are fed up and looking to move out as a result. It also states that the Tenant has been warned many times verbally and in writing.

At the hearing, the Agent stated that the Tenant did not dispute the One Month Notice and sought an Order of Possession for the rental unit effective January 15, 2023, so that the Tenant does not have to vacate over the holidays.

Although the teleconference remained open for the 20-minute duration of the hearing, no one attended on behalf of the Tenant to provide any evidence or testimony for consideration.

Analysis

Section 47 of the Act outlines the grounds upon which a notice to end tenancy for cause may be issued and states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has done any of the things alleged in the One Month Notice.

Section 47(4) of the Act states that 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. Section 47(5) of the Act also states that 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 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the Act, I find that the Tenant was served with the One Month Notice on August 2, 2022. Section 55(2) of the Act states that a landlord may request an order of possession of a rental unit if 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.

Based on the affirmed testimony of the Agent and as there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within the 10-day period provided for under the Act and that the time for doing so has expired. Based on the foregoing, I find that 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 One Month Notice, July 1, 2022, and that the tenancy therefore ended on that date. I therefore find that the Tenant is overholding the rental unit. As a result, and as I find that the One Month Notice complies with the form and content requirements set out under section 52

of the Act, I therefore find that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the effective date of the One Month notice has passed, the Tenant has paid use and occupancy rent for the month of December 2022, and as per the request of the Agent at the hearing, the Order of Possession will be effective at 1:00 P.M. on January 15, 2023.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on January 15, 2023, after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the Act.

Dated: December 9, 2022

Residential Tenancy Branch