



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT CNC FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.
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JD and KG represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The tenant had inadvertently included the landlord's agent's name in the application. As neither party was opposed, the style of cause was amended to reflect the legal name of the landlord.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the landlord duly served with the tenant's Application. The tenant confirmed receipt of the landlord's

evidentiary materials. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence.

The tenant confirmed receipt of the 1 Month Notice to End Tenancy dated July 27, 2022, which was personally served on the tenant on the same date. In accordance with section 88 of the *Act*, I find the tenant duly served with the 1 Month Notice.

I note that the tenant had filed an application to cancel a 1 Month Notice to End Tenancy for End of Employment. I find that this was an obvious error, and that the application pertains to a 1 Month Notice to End Tenancy for Cause, as confirmed by both parties. The hearing proceeded to deal with this 1 Month Notice. The tenant also filed an application for an extension of time to file their application for dispute resolution. I note that the tenant did file their application within the required timelines, and therefore this application for an extension is not required and is therefore cancelled.

Issues

Should the landlord's 1 Month Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2015. The landlord's agents testified that the rent is set at \$920.00 per month, payable on the first of the month. The tenant is responsible for their portion of the subsidized rent, which is currently \$514.00 per month. The landlord holds a security deposit of \$130.00 for this tenancy.

The landlord served the tenant with a 1 Month Notice to End Tenancy on July 27, 2022 on the following grounds:

1. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

2. The 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.

The landlord provided the following reasons for why this wish to end the tenancy. The landlord testified that they have attempted to work with the tenant since November 2016 because the tenant has failed to maintain their rental unit in a state that complies with health and safety standards. The landlord testified that the rental unit is extremely cluttered with items, including food. The landlord submitted detailed evidence documenting the issue, as well as the efforts the landlord has made to work with the tenant in order to remedy the situation.

The landlord is concerned that despite all the efforts, there is been no substantial change to the situation. The landlord testified that they only issued the 1 Month Notice on July 27, 2022 after exhausting all their options, and subsequent inspections were performed on August 23, 2022, October 4, 2022, November 3, 2022, and December 1, 2022, and the landlord believes that not only has the situation not improved, they feel that it may have even worsened. The landlord testified that the tenant would transfer items to their car, but move the items back later. The landlord is also concerned about the aggression the tenant had shown when the landlord served the tenant with the 1 Month Notice.

The landlord testified that there are a total of 95 rental units in the building, and the tenant has allowed the rental unit to deteriorate to a condition that puts the building and other tenants at significant risk. The landlord testified that they are unable to access the bedroom due to the amount of clutter, and expressed concern over the tenant's disregard of how serious the issue has become. The landlord testified that the condition of the rental unit not only poses the significant risk for pests, but is also a significant fire hazard in the multi-tenanted building. As the situation has not improved, the landlord feels that there is no other choice but to end the tenancy. The landlord is requesting an Order of Possession for January 31, 2023 in order to provide the tenant an opportunity to clean and vacate the rental unit.

The tenant does not dispute that there is significant clutter in the rental unit, but testified that they suffer from depression and mental health problems, and need more time to clean up the rental unit. The tenant agreed in the hearing that the rental unit is in bad condition, and that there is too much stuff. The tenant requested more time in order to clean up the rental unit as they cannot afford alternative housing.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

Although I am extremely sympathetic about the issues that the tenant would face if they had to find new housing and the difficulty the tenant has had trying to declutter their rental unit, I find that the landlord provided a significant amount of evidence to support that the tenant has failed to keep the rental unit in a condition to comply with health and safety standards. I find the landlord's concerns to be valid as there are 95 units in the building, and the excessive amount of items accumulated by the tenant poses not only a significant safety and fire risk, but also prevents the landlord or any person from being able to properly access all areas of the rental unit to perform routine maintenance or in the case of an emergency such as a fire.

I have considered the tenant's request for more time. I note that the landlord has demonstrated an exceptional level of patience with the tenant by allowing the tenant many years to address the problem. Despite the issuance of a 1 Month Notice to End tenancy, and despite the time afforded to the tenant to correct this behaviour, the tenant has not taken satisfactory steps to address the problem.

I find the lack of action on part of the tenant supports the landlord's belief that the tenant will continue to put the property and others at significant and immediate risk. I am not confident that the tenant will take this issue seriously considering the time that has passed, and the lack of effort the tenant has demonstrated to address the problem.

For these reasons, I find that the landlord had sufficiently demonstrated that the tenant has put the landlord's property at significant risk, and has jeopardized the health and safety of others in the building. I dismiss the tenant's application to cancel the 1 Month Notice without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, August 31, 2022. In this case, this required the tenant and anyone on the premises to vacate the premises by August 31, 2022. As this has not occurred, I find that the landlord is entitled to an Order of Possession against the tenant for an effective date of January 31, 2023, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2023, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The tenant's application is dismissed without leave to reapply. I find that the landlord is entitled to an Order of Possession.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2023, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 30, 2022

Residential Tenancy Branch