



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Landlord stated that the Tenant did not serve her with a copy of the Application for Dispute Resolution, although the Tenant advised her, via email, that one had been filed. The Landlord stated that she was able to join this teleconference on the basis of information provided by the Residential Tenancy Branch. The Landlord stated that in spite of not being provided with hearing documents by the Tenant, the Landlord is prepared to respond to the Tenant's application to cancel a One Month Notice to End Tenancy for Cause.

On August 31, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was not served to her by the Tenant. As the Tenant did not attend the hearing to establish that this evidence was served, the evidence was not accepted as evidence for the proceedings. The Landlord acknowledged that she has a copy of the One Month Notice to End Tenancy for Cause which was submitted in evidence by the Tenant. As the Landlord has that document, the One Month Notice to End Tenancy for Cause was accepted as evidence for these proceedings.

In January of 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenant, via email. The Landlord stated that she had verbal permission to serve the Tenant with evidence via email.

Section 88(j) of the *Residential Tenancy Act (Act)* permits a party to serve evidence to the other party by any means of service provided for in the *Regulations*.

Section 43(2) of the *Residential Tenancy Regulations* stipulates that documents described in section 88 of the *Act* may, for the purposes of section 88(j) of the *Act*, be given to a person by emailing a copy to an email address provided as an address for service by the person.

I find that the Landlord has submitted insufficient evidence to establish that the Landlord had authority to serve evidence to the Tenant by email. I therefore decline to consider the Landlord's evidence as I am not satisfied that it was properly served to the Landlord. The Landlord was permitted to testify about this evidence and I do not believe it is necessary for me to physically view that evidence.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord stated that:

- this tenancy began on May 01, 2021;
- rent is due by the first day of each month;
- the Tenant shares a kitchen and other common areas with two other people who have tenancy agreements with the Landlord;
- both of the people who share the common areas with the Tenant have provided written complaints regarding the Tenant's behaviour;
- both of the people who share the common areas with the Tenant have reported being pushed by the Tenant;
- both of the people who share the common areas with the Tenant have reported having frequent arguments with the Tenant;
- both of the people who share the common areas with the Tenant have reported being locked out of the common kitchen area by the Tenant;
- one of the people who share the common areas with the Tenant reported that the Tenant threatened her with a knife;
- the One Month Notice to End Tenancy for Cause dated August 29, 2022 was personally served to the Tenant on August 29, 2022;
- the One Month Notice to End Tenancy for Cause declared that the rental unit must be vacated by October 06, 2022;
- the One Month Notice to End Tenancy for Cause declares that the tenancy is ending because the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful interest of another occupant or the landlord; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; that the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord; the tenant has not done required repairs to the unit; and that the tenant has not paid the security deposit within 30 days of being required to do so; and
- the Tenant is still living in the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant have a tenancy agreement.

Section 47(1) of the *Residential Tenancy Act (Act)* permits a landlord to end a tenancy by giving notice to end the tenancy if:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (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;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (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;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a

- prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
 - (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause on August 29, 2022, which informed the Tenants of the Landlord's intent to end the tenancy pursuant to several sections of 47(1) of the *Act*, including section 47(1)(d) of the *Act*.

On the basis of the testimony provided by the Landlord at the hearing, I am satisfied that the Landlord had grounds to serve the One Month Notice to End Tenancy for Cause pursuant to section 47(1)(d) of the *Act*.

On the basis of the Landlord's testimony that the Tenant did not serve the Landlord with the Application for Dispute Resolution and the fact the Tenant did not attend the hearing in support of the Application for Dispute Resolution, I find that the Tenant failed to diligently pursue the Tenant's Application for Dispute Resolution. I therefore dismiss the Application for Dispute Resolution, without leave to reapply.

Section 55(1) of the *Act* stipulates that 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 the landlord's notice to end tenancy complies with section 52 of the *Act*, and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I am satisfied that the One Month Notice to End Tenancy complies with section 52 of the *Act* and I have dismissed the application to set aside the One Month Notice to End Tenancy for Cause, I must grant the Landlord an Order of Possession. I therefore grant the Landlord an Order of Possession, pursuant to section 55(1) of the *Act*.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed, without leave to reapply.

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with 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 *Act*.

Dated: January 19, 2023

Residential Tenancy Branch