



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TORONTO BANK KELOWNA BC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: CNC, OLC, FFT
 LL: OPC, FFL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 4, 2022 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated August 2, 2022 (the "First One Month Notice");
- an order that the Landlord comply with the Act;
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the original hearing on September 26, 2022. At the start of the original hearing, the parties discussed a possible settlement arrangement. The Landlord stated that he had concerns regarding the health and safety issues relating to excessive clutter of the rental unit. The Tenant stated that he has addressed all the Landlord's concerns. The parties agreed to adjourn the hearing to allow the Landlord the opportunity to inspect the rental unit. The parties agreed to meet at 12:00 noon on October 1, 2022 to view the current state of the rental unit. The parties wished to reconvene the hearing at a later date to discuss the findings and the subsequent status of the One Month Notice.

An Interim Decision dated September 26, 2022 and a Notice of Adjourned Hearing was sent to each party on September 26, 2022. I note that the interim decision states "Failure to attend the reconvened hearing at the scheduled time and meet deadlines for the submission and service of evidence may result in a decision being made on the basis of information before the arbitrator and the testimony of the party in attendance."

The Landlords submitted their own Application for Dispute Resolution on December 9, 2022, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- an order of possession for cause relating to a One Month Notice to End Tenancy for Cause dated October 22, 2022 (the “Second One Month Notice); and
- an order granting the recovery of the filing fee.

The Landlords’ Application was crossed with the Tenant’s Application and scheduled to be heard together at the reconvened hearing held on January 31, 2023. The Landlord and the Landlord’s Agent T.G. attended the reconvened hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Landlord, the Landlord’s Agent, and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Tenant, I dismiss the Tenant’s application to cancel the First One Month Notice without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

The Landlord and the Landlord’s Agent were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based on the First One Month Notice to End Tenancy for Cause dated August 2, 2022, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to an Order of Possession based on the Second One Month Notice to End Tenancy for Cause dated October 22, 2022, pursuant to Section 47 and 55 of the *Act*?
3. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord stated that the most recent tenancy agreement indicates that the tenancy began on February 1, 2022. The Landlord stated that they purchased the rental property in September 2022 and that the Tenant was already occupying the rental unit. The Landlord stated that the Tenant is currently required to pay rent in the amount of \$1,146.95 which is due on the first day of each month. The Landlord stated that the Tenant paid a security deposit in the amount of \$565.00 which the Landlord continues to hold. The Landlord confirmed that the Tenant continues to occupy the rental unit.

The Landlord stated that the Tenant has had several warning regarding excessive clutter and hoarding in the rental unit. The Landlord stated that the Tenant did not comply with the Landlord's request to clear the rental unit of this dangerous clutter as it put the Landlord's property at significant risk. As such, the Landlord served the Tenant with the First One Month Notice to End Tenancy in person on August 2, 2022. The Tenant applied to dispute the first one month notice on August 4, 2022, however, no one attended the reconvened hearing in support of the Tenant's Application to cancel the First One Month Notice.

The Landlord and their Agent stated that they conducted two additional inspections on October 1, 2022 and again on December 6, 2022. On both occasions, the Landlord stated that the Tenant had not yet complied with their requests to de clutter the rental unit as it was putting the Landlord's property at risk. The Landlord stated that they were unable to navigate through the rental unit as there was clutter of the Tenant's possession everywhere.

The Landlord stated that they had difficulties entering the bedroom given there were boxes stacked from floor to ceiling throughout the room. The Landlord is worried about a fire risk. The Landlord stated that there were appliances plugged in everywhere and

that you could not see the floor or counters in the rental unit given the clutter. As such, the Landlord is seeking an order of possession to end the tenancy.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 47(4) of the *Act* provides that a Tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice. After service of the first One Month Notice on August 2, 2022 the Tenant had until August 12, 2022 to dispute the Notice. I find that the Tenant filed her Application on August 4, 2022 which is within the timeframe permitted under the *Act*. Therefore, I am satisfied that the Tenant received the first One Month Notice given they applied to dispute it within the appropriate timelines.

As previously mentioned, no one attended the reconvened hearing in support of the Tenant's Application to cancel the first One Moth Notice. As such, the Tenant's Application was dismissed without leave to reapply.

Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the First One Month Notice complies with the requirements for form and content. I further find the Landlord has provided sufficient evidence to demonstrate that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

As the effective date of the First One Month Notice has passed and the Landlord stated that the Tenant continues to occupy the rental unit, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order should be served onto the Tenant as soon as possible. As the Landlord was successful in ending the tenancy based on the First One Month Notice, I find that it is not necessary to consider the merits of the Second One Month Notice. As such, I dismiss the Landlord's Application for an Order of Possession based on the Second One Month Notice without leave to reapply.

Conclusion

The Tenant did not appear at the time of the hearing; therefore, their Application is dismissed in its entirety without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

As the Landlord was successful in gaining the order of possession based on the First One Month Notice, their application for an order of possession on the Second One Month Notice was not necessary and is therefore dismissed without leave to reapply.

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: January 31, 2023

Residential Tenancy Branch