



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW VISTA SOCIETY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 20 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. with only me present. The landlord's agent called in late at 9:33 a.m. This hearing ended at 9:50 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed her name and spelling. She stated that she is a manager for tenant services, employed by the landlord company ("landlord") named in this application and that she had permission to speak on its behalf. She said that the landlord owns the rental unit, and she provided the rental unit address. She provided the landlord's mailing address for me to send this decision to the landlord after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this

hearing, the landlord's agent affirmed, under oath, that she would not record this hearing.

I explained the hearing process to the landlord's agent. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

The landlord's agent stated that the tenant was personally served with a copy of the landlord's application for dispute resolution hearing package, on September 13, 2022. She claimed that the two of the landlord's janitorial staff served the tenant. She said that the landlord provided a proof of service with this application, signed by the landlord's two staff members, indicating that one person served the tenant, while the other person witnessed the service. She explained that the tenant also signed the proof of service document, confirming receipt. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on September 13, 2022.

The landlord's agent said that she personally served the tenant with a copy of the landlord's One Month Notice to End Tenancy for Cause, dated May 2, 2022 ("1 Month Notice") on the same date. She stated that the landlord provided a proof of service with this application, signed by her and another landlord staff member, who witnessed the service. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on May 2, 2022.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The tenant did not provide any written evidence for this hearing. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent stated the following facts. This tenancy began on January 14, 2012. A written tenancy agreement was signed by both parties. Monthly rent in the current amount of \$500.00 is payable on the first day of each month. A security deposit of \$262.50 was paid by the tenant and the landlord continues to retain this deposit in full. The tenant continues to reside in the rental unit.

The landlord's agent confirmed that the 1 Month Notice has an effective move-out date of June 30, 2022. She said that the notice was issued to the tenant for the following two reasons, as indicated on the notice, which she read aloud during this hearing:

- *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;*
 - *put the landlord's property at significant risk.*

During this hearing, the landlord's agent read aloud the following details of cause, indicated on page 2 of the landlord's 1 Month Notice (tenant's name redacted for confidentiality):

"The tenant smokes in the common areas of the building and has, on at least two occasions, created a hazard by placing lit cigarettes in the lobby planters. The earth in the planters begins to smoke and creates a high risk of fire.

The tenant received a letter notifying him of the hazard (June 2021) and a notice of breach of tenancy agreement (January 5, 2022). Despite repeated conversations from the office and other tenants [tenant's name] continues to engage in a hazardous practice and smokes in the common area."

The landlord's agent testified regarding the following facts. The tenant is elderly. He repeatedly smokes in the common areas of the residential building, which is not permitted. The tenant was smoking in the lobby as recently as November 9 and 10, 2022. The lobby is filled with smoke and the tenant puts out his lit cigarettes in the planters of the lobby. The tenant's health has deteriorated. The tenant urinates in the hallways, the laundry room, and the amenity room, at the residential property. The tenant's family is looking for a supportive housing environment for the tenant but has not been successful. The landlord called the City and the local health authority to see if they could fine the tenant. There have been several incidents involving the tenant on May 17, 2022, and June 22, 2022 for urinating, June 24, 2022 for urinating in front of another tenant, June 29, 2022 for urinating in the lobby, and July 5, 2022 for smoking.

The landlord's agent stated the following facts. She personally provided letters to the tenant in June 2021, January 25, 2022, and August 22, 2022. She informed the tenant that the landlord was proceeding with this eviction, pursuant to the 1 Month Notice. The landlord issued at least two receipts to the tenant for "use and occupancy only" for rent paid after the effective date of the 1 Month Notice. However, the tenant usually pays rent to the landlord by automatic withdrawal. Just this week on Tuesday or Thursday before this hearing, the landlord's agent spoke with the tenant's family in the lobby of the residential building and reminded them about this hearing date and hearing process, that it was important to attend this hearing, and reminded them that the tenant has the package for this hearing. She also provided another photocopy of the hearing notice with the date and calling information to the tenant's sister. She met with the tenant's family in May 2022 after the 1 Month Notice was served to the tenant. The landlord is agreeable to a 30-day order of possession against the tenant in order to give him time to move out.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I find that the landlord provided sufficient evidence that the tenant seriously jeopardized the health, safety, and lawful right of other occupants and the landlord at the residential property. As I have found one of the two reasons on the 1 Month Notice to be valid, I do not need to examine the other reason.

I accept the landlord's undisputed documentary evidence and the undisputed, affirmed testimonial evidence of the landlord's agent at this hearing. The tenant did not attend this hearing.

I find that the tenant engaged in unsafe, hazardous, inappropriate, and risky behaviour at the residential property. I find that this caused serious jeopardy to the health, safety, and lawful rights of the landlord, its agents, and other occupants at the residential property. I find that the behaviour of the tenant, causes fear, concern, and safety issues for the landlord and other occupants at the residential property.

I accept the landlord's undisputed documentary and testimonial evidence that the tenant smokes in the common areas at the residential property and puts out lit cigarettes in planters, causing smoke and fire hazards. I accept the landlord's undisputed

documentary and testimonial evidence that the tenant urinates in the common areas at the residential property, including in front of other occupants.

The above pattern of behaviour has been ongoing, even after the 1 Month Notice was served to the tenant. The tenant engaged in smoking in the lobby as recently as November 9 and 10, 2022. The landlord had verbal conversations with the tenant and his family in May 2022 and January 2023. The landlord provided written breach letters to the tenant from June 2021 to August 2022, regarding the above behaviour. The landlord provided copies of the above documents for this hearing.

The tenant did not file an application pursuant to section 47(4) of the *Act* within 10 days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to take this action within 10 days led to the end of this tenancy on June 30, 2022, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 30, 2022.

I find that the landlord's 1 Month Notice complies with section 52 of the *Act*. I grant the landlord's application and issue an Order of Possession to the landlord, effective thirty (30) days after service on the tenant, pursuant to section 55 of the *Act*. The landlord's agent verbally requested a 30-day order of possession at this hearing.

I find that the landlord has not waived its rights to enforce the 1 Month Notice, by accepting rent from the tenant after the effective date on the notice. I accept the undisputed, affirmed testimony of the landlord's agent that she met with the tenant's family in May 2022, after the landlord's 1 Month Notice was served to the tenant. I accept the undisputed, affirmed testimony of the landlord's agent that she spoke to the tenant and his family in the week before this hearing, to remind them of this hearing date, the importance of attending, provided another hearing notice with the information to call in, and reminded them of the landlord's application package. I accept the undisputed, affirmed testimony of the landlord's agent that the landlord provided "use and occupancy only" receipts to the tenant for some of the rent paid after the effective date of the notice, given that the tenant usually pays rent by automatic withdrawal.

I find that the landlord did not cancel this hearing, withdraw this application, or cancel the 1 Month Notice. The landlord proceeded to this hearing and pursued an order of possession against the tenant, indicating that it wanted an end to this tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord's application is granted.

I grant an Order of Possession to the landlord effective thirty (30) days after service on the tenant. The tenant must be served with a copy of this Order. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$262.50 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant's security deposit of \$162.50 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 13, 2023

Residential Tenancy Branch