



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes CNC

Introduction and Preliminary Matters

On January 3, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act").

On January 6, 2023, this Application was set down for a hearing on February 16, 2023, at 11:00 AM.

A.G. and R.M. attended the hearing as agents for the Landlord, and A.F. attended the hearing as counsel for the Landlord; however, the Tenant did not attend the hearing at any point during the 30-minute teleconference. At the outset of the hearing, all parties in attendance, with the exception of A.F., provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:30 AM. Only representatives for the Respondent dialed into the teleconference during this time. 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 I was the only other person who had called into this teleconference.

A.F. advised that the Notice was served to the Tenant by being posted to his door on December 22, 2022. However, she indicated that the Tenant called R.M. that day, confirmed that he received the Notice, and then discussed it with her. R.M. acknowledged that she spoke to the Tenant that day about the Notice he received. It is A.F.'s position that, given that the Tenant received the Notice on December 22, 2022, he was required to dispute the Notice by January 2, 2023, at the latest. She referred to the *Interpretation Act* to support her position that the Tenant disputed the Notice a day late. However, she did not submit the relevant excerpts from the *Interpretation Act* to corroborate this position.

While I acknowledge A.F.'s submission here, I note that the statutory holiday of January 1, 2023, fell on a Sunday, and I can reasonably infer that all government offices were closed on January 2, 2023, as a result. As such, I dismiss A.F.'s position that the Tenant applied too late to dispute the Notice. I am satisfied that the Tenant made this Application on the last day possible, in accordance with the *Act*.

As the Tenant did not attend the hearing, his Application has been dismissed without leave to reapply. However, despite dismissing the Tenant's Application because he did not attend, I must still consider the validity of the Notice.

A.F. advised that the Landlord's evidence was served to the Tenant by Xpresspost on February 3, 2023 (the Xpresspost tracking number is noted on the first page of this Decision), and a proof of service was submitted to corroborate this service. She indicated that this package was refused by the Tenant; however, he approached R.M. on February 14, 2023, and she showed him all of the Landlord's evidence. R.M. testified that he viewed all of the Landlord's evidence that day. Regardless, based on this undisputed evidence, I am satisfied that the Landlord's evidence was deemed to have been received by the Tenant five days after it was mailed. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.M. advised that the tenancy started on November 1, 2021, that his subsidized rent was currently established at \$833.00 per month, and that it was due on the first day of each month. A security deposit of \$624.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

A.F. advised that the Notice was served to the Tenant, along with 118 pages of documents explaining the reasons for service of the Notice, by posting this package to his door on December 22, 2022. The following are all the reasons the Landlord served the Notice:

- The Tenant has allowed an unreasonable number of occupants in a rental unit/site/property/park;
- The Tenant or a person permitted on the residential property by the Tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the Landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant, or
 - put the landlord's property at significant risk;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has, or is likely to cause damage to the landlord's property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
- The Tenant or a person permitted on the residential property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardized a lawful right or interest of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective end date of the tenancy was noted as January 31, 2022, on the Notice.

A.F. advised that there have been numerous complaints about the Tenant's actions and behaviours since the start of the tenancy, including 129 pages of documented issues since June 3, 2022. She referred to multiple breach letters and warnings regarding excessive noise, that were submitted as documentary evidence, to support this position. As well, she cited videos submitted that demonstrated that the Tenant would frequently invite "known prostitutes" back to the rental unit and would engage in loud, sexual

behaviours with the windows open. She stated that other residents, including children could hear these inappropriate interactions. In addition, he would have loud, screaming exchanges with females in the rental unit that would alarm other residents due to their violent nature.

Finally, she submitted that the Tenant was filmed by the building security camera entering the elevator through the lobby, and a baggie had dropped from the pocket of his pants. She indicated that the video demonstrated that employees of the Landlord had later picked up this baggie, and it was determined to contain crystal meth. This, of course, would be of great concern as any animal, child, or other person could have unsuspectingly picked this up. As well, she referred to the crime free addendum that is part of the tenancy agreement, and referred to the evidence submitted to support her position that the Tenant has jeopardized his tenancy.

R.M. testified that this baggie dropped out of the Tenant's pants pocket as he was entering the elevator, and it was later confirmed to contain crystal meth. As well, she testified that this was all captured on security camera, and the Tenant was easily identified.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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;*

(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;*

When reviewing the totality of the consistent and uncontroverted evidence before me, I am satisfied that the Landlord has sufficiently substantiated that the Tenant, and/or his guests, have engaged in a number of inappropriate, unacceptable, and offensive behaviours and actions that would justify ending the tenancy on many of the reasons that were checked off on the Notice.

As I am satisfied that there is sufficient compelling and persuasive evidence before me to support the issuance of this Notice, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 47 and 55 of the *Act*. In addition, as the Tenant's Application was dismissed in its entirety, Section 55 permits that an Order of Possession be granted in any event. As such, for multiple reasons, an Order of Possession is granted to the Landlord that takes effect **two days** after service on the Tenant.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a formal copy of an Order of Possession effective **two days** after service on the Tenant. Should the Tenant or any

occupant 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.

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: February 16, 2023

Residential Tenancy Branch