



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Horizon Tower Toldings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, CNR**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- cancellation of the landlords' 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46 of the Act
- cancellation of a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47 of the Act

The landlord appeared by agent NW and tenant JF with advocate DA appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to RTB Rules of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated November 18, 2022 with an effective date of December 31, 2022 and the 10 Day Notice dated December 13, 2022 with an effective date of December 31, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?

Background and Evidence

The tenancy commenced November 1, 2020 for a fixed term until October 31, 2021 and then month to month thereafter. Rent is \$1,650.00 per month due on the first of the month and the tenant paid a security deposit of \$825.00 which is held in trust by the landlord. The tenant still occupies the rental unit.

The landlord provided an incident report in evidence in respect of events that occurred over November 5 and 6, 2022:

1. On November 5, 2022 the landlord was performing building walks. The resident manager walked through the parkade and heard loud music from a parked car. The tenant was in the car. The manager asked her to turn down the music. He believed the tenant was intoxicated but she complied with his request. Later that day there was a call from a resident in another building who saw a female passed out on a balcony playing loud music which the resident could hear from her balcony. The landlord determined that the unconscious person was the tenant.
2. On November 6, 2022 another occupant in the building complained about the tenant playing loud music. and then pounding on his door with an object. His written complaint was provided in evidence. It details that the occupant yelled at and swore at the tenant in response to the loud music he believed she was playing. In response the tenant attended at the occupant's door and pounded on it with an object. The door was damaged. The police attended and entered the tenant's rental unit, but she wasn't there. Another occupant of the rental also sent an email to the landlord about the tenant pounding on the door and yelling but wasn't able to say that it was the tenant.

The landlord stated that she had no proof the tenant was intoxicated but stated she was "definitely off character" that weekend. The landlord further testified that the incidents over the course of one weekend were not the tenant's normal behaviour. The landlord confirmed that the tenant has not caused issues since that weekend.

With respect to the 10 Day Notice the landlord testified that the tenant did not pay rent on December 1, 2022. She produced a ledger in evidence showing the tenant owed \$3,460.40 owing as the date of the hearing.

The tenant did not dispute that she failed to pay rent on December 1, 2022 or that as of the date of the hearing she owed \$3,460.40 in unpaid rent.

She stated that she was not intoxicated and the manager did not come close to her. She wasn't at home when the police attended her apartment on November 6, 2022. She was never told by the landlord to turn down her music and she didn't receive a warning letter from the landlord. She further testified that the loud music was being played during the day. She stated that she has been quiet since the November 5-6, 2022 weekend.

The landlord advised in the hearing that they would be prepared to accept an order of possession, if granted, for the end of February 2023.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the 10 Day Notice and One Month Notice served on the tenant.

The tenant admits to not paying rent on December 1, 2022 which is the basis for the issuance of the 10 Day Notice. She did not provide a lawful reason to withhold rent. She did not dispute that the current amount of rent owed is \$3,460.40. I find that the tenant failed to pay rent as required on December 1, 2022. I therefore dismiss the tenant's application disputing the 10 Day Notice.

The 10 Day Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the 10 Day Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant's application. As section 55(1) of the Act is satisfied,

the landlord is entitled to an order of possession. During the hearing the landlord advised that they are prepared to accept an order of possession ending the tenancy on February 28, 2023, and the order of possession will be effective on that date at 1:00pm.

As the 10 Day Notice is valid and enforceable, I do not need to deal with the One Month Notice.

Section 55(1.1) requires me to grant the landlord a monetary order for unpaid rent if I find the conditions outlined in section 55(1) are satisfied. I find that they are satisfied and based on the undisputed evidence of the landlord the tenant currently owes \$3,460.40 in unpaid rent. The landlord is entitled to a monetary order for unpaid rent.

Conclusion

The tenant's application for dispute resolution with respect to the One Month Notice is granted. The tenant's application for dispute resolution in respect of the 10 Day Notice is dismissed.

The landlord is granted an order of possession which will be effective February 28, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$3,460.40 in recovery of unpaid rent. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 1, 2023

Residential Tenancy Branch