



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ROYAL CITY LEGION HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNC-MT, OL
For the landlord: OPC, OPN

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an extension of the timeline for disputing the Notice, pursuant to section 66; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62.

The landlord's application pursuant to the Act is for an order of possession under the Notice, pursuant to sections 47 and 55.

I left the teleconference connection open until 9:46 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent RR (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

Service of the tenant's application

The landlord affirmed he did not receive the tenant's notice of hearing. The landlord did not know the tenant applied for dispute resolution.

Rule of Procedure 3.1 states:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

(emphasis added)

Based on the landlord's testimony, I find the tenant did not serve the notice of hearing.

I dismiss the tenant's application with leave to reapply, as the tenant did not serve the notice of hearing. Leave to reapply is not an extension of timeline to apply.

Service of the landlord's application

The landlord served the notice of hearing and the evidence (the landlord's materials) in person on November 29, 2022 at 10:55 AM. The landlord affirmed the rental building caretaker LP witnessed the service of the materials.

Based on the landlord's convincing testimony, I find the landlord served the materials on November 29, 2022, in accordance with section 89(2)(a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issue to be Decided

Is the landlord entitled to an order of possession under the Notice?

Background and Evidence

While I have turned my mind to the evidence of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2016. Monthly rent is \$360.00, due on the first day of the month. The landlord collected and holds a security deposit in the amount of \$250.00.

The landlord slid the Notice under the tenant's front door on September 22, 2022. The landlord stated that LP witnessed the service of the Notice. The landlord testified the tenant verbally confirmed receipt of the Notice a few days later.

The landlord submitted a copy of the September 22, 2022 Notice into evidence. It indicates the tenant significantly interfered with another occupant, seriously jeopardized the health or safety of another occupant and put the landlord's property at significant risk. The effective date is October 25, 2022.

The details of the cause indicate the landlord received 5 noise complaints from other tenants between April 18 and September 17, 2022.

The landlord said the tenant continues to occupy the rental unit.

The landlord is seeking an order of possession.

Analysis

I accept the uncontested convincing testimony that the landlord slid the Notice under the tenant's door on September 22, 2022 and the tenant confirmed receipt of the Notice a

few days later. Accordingly, I find the landlord sufficiently served the Notice, per section 71(2)(c) of the Act.

Per section 90(c) of the Act, I deem the tenant received the Notice on September 25, 2022.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

Section 47(5) of the Act states:

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Section 47(5) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property.

As the tenant is occupying the rental unit and the effective date of the Notice is October 25, 2022, I find that the landlord is entitled to an order of possession, pursuant to section 55(2)(b) of the Act.

Residential Tenancy Branch Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession:

However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
- e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.

- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
- e.g., If the tenant provides evidence of a disability or a chronic health condition.

Considering that the tenant has been occupying the rental unit since September 2016, I find it reasonable to extend the effective date of the order of possession to ten calendar days after service on the tenant.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective **ten calendar days after service of this order** on the tenant. Should the tenant 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 23, 2023

Residential Tenancy Branch