



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CMHA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, PSF, LRE, LAT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “*Act*”), to cancel a One-Month Notice to End Tenancy for Cause, (the “*Notice*”) dated August 26, 2022, for a monetary order for compensation for my monetary loss or other money owed, for an order that the landlord provide services or facilities required by the tenancy agreement or law, for an order to suspend or set conditions on the Landlord’s right to enter the rental unit, to request an order that the Landlord comply with the *Act*, and to request authorization to change the locks to the rental unit. The matter was set for a conference call.

The Landlord attended the conference call hearing; however, the Tenant did not. As the Tenant is the applicant to these proceedings, I find that the Tenant had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was affirmed to be truthful in their testimony and was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Preliminary Matters – Amendment Request

On January 31, 2023, the Tenant submitted a request to amend their application to the Residential Tenancy Branch.

I have reviewed the Tenant application amendment request and noted that the Tenant has requested to add a person to this application that does not reside in the same rental unit as the Tenant.

As the Tenant has listed dispute items on their original application that deal specifically with the Tenant's rental unit and require a decision on if the Tenant's tenancy will continue, I find that this would be inappropriate to add a person to this application that is not residing in the Tenant's rental unit.

Additionally, I find that there is no evidence before me to show that the Tenant had served their application for amendment request to the Landlord before these proceedings.

For these reasons, I dismiss the Tenant's amendment request.

Issues to be Decided

- Should the Notice dated August 26, 2022, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to a monetary order for compensation for my monetary loss or other money owed?
- Is the Tenant entitled to an order that the landlord to provide services or facilities required by the tenancy agreement or law?
- Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?
- Is the Tenant entitled to an order that the Landlord comply with the Act?
Is the Tenant entitled to an order authorizing them to change the locks to the rental unit?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that the tenancy began on January 1, 2018, that rent is geared to income and that no security deposit or pet damage deposit were paid to the Landlord. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

This hearing was scheduled for a teleconference hearing on this date.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. Rule 7.3 of the Rules of Procedure stipulates that an 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.

This hearing was scheduled to commence at 1:30 p.m. on February 3, 2023. I called into the teleconference at 1:30 p.m.; the line remained open while the phone system was monitored for ten minutes, and the only participant who called into the hearing during this time was the Landlord. Therefore, as the Tenant did not attend the hearing by 1:46 p.m. and the Landlord appeared and was ready to proceed, I dismiss the Tenant's application without leave to reapply.

The Landlord testified that they served the One-Month Notice to end tenancy to the Tenant on August 26, 2023, by posting the Notice to the front door of the rental unit to the Tenant.

The reason for the Notice was checked off as follows:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
 - *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
 - *Put the landlord's property at significant risk.*
- *Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property.*

- *Tenant or person permitted on the 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 or the Landlord*

The Notice states the Tenant must move out of the rental unit by September 30, 2022. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Tenant filed to dispute the Notice on October 3, 2022.

The Landlord testified that they served the Notice to the Tenant as the Tenant has repeatedly permitted a guest onto the rental property that has threatened and harassed the Landlord, the Landlord's staff, and other occupants of the rental property. The Landlord testified that the Tenant's guest has assaulted staff and chased other occupants with a knife. The Landlord submitted two warning letters issued to the Tenant into documentary evidence.

The Landlord is requesting that the Notice to end tenancy be enforced and an order of possession is issued.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant was deemed to have received the Notice on August 29, 2022, three days after it was posted to the front door of the rental unit, pursuant to the deeming provision set out in section 90 of the Act.

Pursuant to section 47 of the Act, a tenant who received a notice pursuant to this section has ten days to dispute the Notice after it had been received. Therefore, I find the Tenant had until September 8, 2022, to file their application to dispute this Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application late on October 3, 2022, well past the statutory time limit and past the effective date of the Notice.

However, as stated above, the Tenant had failed to attend these proceedings and I have already dismissed their application to dispute the Notice.

Additionally, I have reviewed the testimony of the Landlord and the documentary evidence that I have before me in this case, and I find the Landlord's testimony supported by the warning letters to be a credible account of the incidents that have happened on the rental property. I also find that the actions and behaviour of the Tenant's guest, detailed by the Landlord, would have unreasonably disturbed the Landlord and the other occupants of the rental property and that this Notice was valid.

Section 55 of the *Act* states that a landlord may request an order of possession and monetary order if a notice to end the tenancy has been given by the landlord and the tenant has failed in their attempt to dispute a Notice to end tenancy.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

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(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have reviewed the Notice to End Tenancy, and I find the Notice complies with section 52 of the *Act*. As I have dismissed the Tenant's application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I grant an Order of Possession to the Landlord effective two 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.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application to cancel the Notice, dated August 26, 2022, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. 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 3, 2023

Residential Tenancy Branch