



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WESLEY PLACE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction and Preliminary Matters

On October 18, 2022, the Tenants 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 2, 2022, this Application was set down for a hearing on February 28, 2023, at 9:30 AM.

K.B. and T.M. attended the hearing as agents for the Landlord; however, neither Tenant attended the hearing at any point during the 18-minute teleconference. At the outset of the hearing, all parties in attendance provided a solemn affirmation. As well, K.B. advised of the correct name of the Landlord, and the Style of Cause on the first page of this Decision has been amended to reflect this change.

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 9:30 AM and monitored the teleconference until 9:48 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.

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

K.B. advised that the Landlord was never served with any of the Tenants'. Furthermore, she testified that the Landlord's evidence was served to the Tenants by registered mail on February 13, 14, and 15, 2023, and the proof of service was submitted to corroborate this service. However, it appeared as if two packages were sent by Xpresspost and one was sent by registered mail (the Xpresspost and registered mail tracking numbers are noted on the first page of this Decision). She testified that these packages were refused by the Tenants. Regardless, based on this undisputed evidence, I am satisfied that the Landlord's evidence was deemed to have been received by the Tenants five days after they were 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

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?

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.

K.B. advised that the most current tenancy started on October 15, 2021, that the rent was currently established at \$1,750.80 per month, and that it was due on the first day of each month. A security deposit of \$862.50 was also paid. A copy of the signed tenancy agreement was entered in evidence for consideration.

She then testified that the Notice was served to the Tenants by registered mail on or around October 4, 2022. The reason the Landlord served the Notice was because 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." The effective end date of the tenancy was noted as November 30, 2022, on the Notice.

She submitted that on June 29, 2022, the Tenants yelled and swore at her unnecessarily, and she then issued a warning letter regarding their behaviour. Since then, the Tenants have engaged in inappropriate behaviours in an attempt to bully, discredit, and threaten her. She testified that the Tenants wrote offensive comments online against her, and named her specifically. She submitted that the Tenants complained about a water issue, and after the Landlord took steps to address their concerns, the Tenants would send daily emails to harass her. As well, she stated that the Tenants also unnecessarily contacted her head office to complain about her. She advised that she warned the Tenants on or around the end of September 2022 to refrain from continuing their unacceptable behaviours; however, she testified that the Tenants then called the police and lied to them. All of these behaviours, in totality, prompted service of the Notice, and she referenced the documentary evidence submitted to support the Landlord's justification for service of the Notice.

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:*

(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,

When reviewing the totality of the consistent and uncontroverted evidence before me, I am satisfied that the Landlord has sufficiently substantiated that the Tenants have engaged in a number of inappropriate, unacceptable, and offensive behaviours and actions that would justify ending the tenancy for the reason that was 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 Tenants' 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 Tenants.

As the Tenants were not successful in this Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Tenants' 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 Tenants. Should the Tenants 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 28, 2023

Residential Tenancy Branch