



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LMLTD Holdings Corp
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

Introduction

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

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlord represented by an agents NH, BJ, and CK. The tenant BO also appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated July 21, 2022 with an effective date of August 31, 2022. Pursuant to section 89 of the Act the tenants are 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 tenants? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on October 1, 2019 on a month to month basis. Rent is \$1,522.00 per month due on the first of the month. The landlord holds a security deposit of \$750.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord stated that they served the One Month Notice on the tenants as two other occupants of the rental property complained that someone had stolen their delivery packages. The occupants provided photos of the missing packages to the landlord. The landlord provided the photos in evidence. The landlord reviewed the security video footage and observed as person the landlord identified as the tenant BO. The footage from July 11, 2022 purported to show the tenant taking a package. The footage from July 19, 2022 also evidenced the tenant taking a package. The packages in the videos match the photos provided by the occupants. The landlord provided both videos in evidence.

The tenant BO stated that her son was also expecting packages on those days and the tenant merely moved the other packages to read the label on them and determine whether they were her son's packages. The tenant BO did not deny being the individual depicted in the videos. The tenant provided delivery receipts in evidence. The tenant testified that she filed an application for dispute resolution on July 29, 2022 in response to the One Month Notice.

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 tenants apply to cancel a Notice to End Tenancy." The tenant's application for dispute resolution is not before me.

In this case, the landlord is seeking an order of possession and has the burden of proving the validity of the One Month Notice served on the tenants.

Although the tenant's application for dispute resolution is not before me, I accept the tenant BO's testimony that she applied to dispute the Notice to End Tenancy. I find however, that pursuant to Rule of Procedure 6.6 that the onus of proof remains on the landlord to prove the validity of the Notice served on the tenants.

The landlord has provided evidence in the form of photos and videos showing the tenant BO taking packages from what appears to be a common mail area in the rental property. The July 11, 2022 video depicts the tenant BO picking up two packages from two different areas in the mail room and then leaving the mail room carrying both packages. One of the packages matches the photo provided by the landlord. The July 19, 2022 video depicts the tenant BO picking up a package in the mail room and leaving. That package also matches a photo provided by the landlord.

I do not find the tenant's explanation of picking up packages to determine whether they were meant for her son to be a credible explanation, as the videos clearly show the tenant BO leaving the mailroom area with the packages. Additionally, I do not find that the packages belonged to the tenants, as they clearly match the photos provided by the other occupants of their packages. I find that the tenant BO took packages from the common mail room that did not belong to her.

Section 47 of the Act allows the landlord to issue a One Month Notice to End Tenancy for cause if the tenants are engaged in illegal activity that is likely to jeopardize a right or lawful interest of another occupant. Taking packages that belong to other occupants is theft, and the tenant BO deprived those occupants of items that belonged to them.

The One Month Notice meets the form and content requirements of section 52 of the Act and is therefore valid and enforceable. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the One Month Notice meets the form and content requirements of section 52 of the Act and if I uphold the landlord's notice. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective February 28, 2023 at 1:00pm.

Having been successful in their application, the landlord is entitled to recover the \$100.00 filing fee for the application.

Conclusion

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 entitled to compensation in the amount of \$100.00 for the filing fee. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the amount owed.

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 08, 2023

Residential Tenancy Branch