



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KNOX CENTRE DBA KNOX VISION SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, MNRL-S, MNDL-S, FFL**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 4, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated August 28, 2022 (the "One Month Notice");
- a monetary order for unpaid rent;
- a monetary order for damage or loss;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00AM on March 16, 2023 as a teleconference hearing. P.M. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 14 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that P.M. and I were the only persons who had called into this teleconference.

P.M. testified the Application and documentary evidence package was served to the Tenant by Registered Mail on November 18, 2022. The Landlord provided the Registered Mail tracking information during the hearing, which has been reproduced on the cover page of this decision in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on November 23, 2022, the fifth day after the registered mailing.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice. The Landlord's request for a monetary order for money owed or compensation for damage or loss, is dismissed with leave to reapply.

P.M. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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 are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

P.M. testified that the tenancy began on April 1, 2019. Currently rent in the amount of \$1,300.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$650.00 which the Landlord continues to hold. The Landlord provided a copy of the tenancy agreement in support.

P.M. stated that the Landlord became aware of the Tenant or their guest smoking in the rental unit. P.M. stated that the smell of smoke was strong and has been impacting other neighbouring occupants. P.M. stated that the Landlord has cautioned the Tenant in writing on several occasions, however, the Tenant denies smoking in the rental unit. The Landlord conducted an inspection of the rental unit on August 1, 2022 and found strong evidence of smoking in the rental unit. The Landlord scheduled a follow up inspection with the Fire Department who also shared the same observations of smoking

taking place in the rental unit. These observations were recorded in an email submitted into evidence.

The Landlord subsequently served the Tenant with a One Month Notice for Cause dated August 28, 2022 with an effective vacancy date of September 30, 2022 by posting it to the Tenant's door on August 28, 2022. The Landlord provided a proof of service in support. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and put the landlord's property at significant risk"

"Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

P.M. stated that the Tenant continues to occupy the rental unit and refuses to pay rent. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenant with a One Month Notice on August 28, 2022 by posting it to the Tenant's door. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on August 31, 2022, the third day after it was posted.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenant on August 31, 2022 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy. I further find that the Landlord has demonstrated sufficient cause to end the tenancy.

As the P.M. stated that the Tenant has not paid rent for March 2023, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with the Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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: March 16, 2023

Residential Tenancy Branch