



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PACIFIC EDGE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on November 9, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- An extension to the timeline set out under section 47(4) of the Act for disputing the One Month Notice to End Tenancy for Cause (One Month Notice); and
- Cancellation of the One Month Notice.

The hearing was convened by telephone conference call at 11:00 A.M. (Pacific Time) on March 21, 2023, and was attended by the Landlord's agent K.L. (Agent). All testimony provided was affirmed. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Agent was advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. The Agent acknowledged

service of the Notice of Dispute Resolution Proceeding (NODRP) by the Tenant and stated that there are no concerns with regards to the service date or method. I verified that the hearing information contained in the NODRP was correct and I note that the Agent had no difficulty attending the hearing on time using this information. Based on the above, I therefore commenced the hearing as scheduled despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 15-minute duration of the hearing, no one called in on behalf of the Tenant.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address confirmed in the hearing.

Issue(s) to be Decided

Is the Tenant entitled to an extension to the timeline set out under section 47(4) of the Act for disputing the One Month Notice?

Is the Tenant entitled to cancellation of the One Month Notice, and if not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Agent stated that the Tenant continues to store their street-legal scooter inside the rental unit despite being advised by the Landlord repeatedly that they are not to ride or roll it through the building or store it inside the rental unit. The Agent stated that the Tenant is damaging the carpet by rolling it through the building and that it presents a serious risk to the building as it contains batteries and a fuel tank. Further to this, the Agent stated that the Tenant smokes inside the rental unit where the scooter is stored, increasing the risk of fire and combustion of the fuel tank, and that other occupants of the building are being unreasonably disturbed by the second-hand smoke.

The Agent stated that despite providing the Tenant with options to store their street-legal scooter on the property in an area that does not cause damage or risk to the building, the Tenant has refused to stop storing it in the rental unit. The Agent stated that they inspected the rental unit on February 16, 2023, at which time the scooter was inside the rental unit while the Tenant was smoking, which shows a flagrant disregard for the Landlord's property and the safety of other occupants. As a result, the Agent stated that the Landlord served the One Month Notice.

The One Month Notice in the documentary evidence before me is signed and dated October 28, 2022, has an effective date of November 30, 2022, and states the following reasons for ending the tenancy:

- 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 tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; and
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gave written notice to do so.

The Agent stated that the One Month Notice was personally served on the Tenant by the property manager B.P. in the presence of their spouse H.V., who is also an agent for the Landlord. The Agent sought an Order of Possession as soon as possible.

Neither the Tenant nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the uncontested affirmed testimony before me from the Agent, I find that the Tenant was personally served with the One Month Notice on October 28, 2022. As a result, I find that the Tenant had until Friday November 7, 2022, to seek cancellation of the One Month Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch (Branch), pursuant to section 47(4) of the Act. Branch records show that the Tenant filed the Application on November 9, 2022, and although the Tenant sought an extension to the time limit set out in section 47(4) of the Act, pursuant to section 66(1) of the Act, they failed to appear at the hearing of their own Application to provide any evidence or testimony regarding whether exceptional circumstances prevented them from applying on time. As a result, I find that they did not, and I dismiss their claim for an extension to the timeline set out under section 47(4) of the Act without leave to reapply.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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 the Tenant did not dispute the One Month Notice on time, and I have

dismissed their Application seeking an extension of the time limit to dispute the One Month Notice, I find that they are conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice and I find that the tenancy therefore ended on the effective date of November 30, 2022. As a result, I find that the Tenant is overholding the rental unit and I dismiss their Application seeking cancellation of the One Month Notice without leave to reapply. As I am satisfied that the One Month Notice complies with section 52 of the Act, the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. I therefore grant the Landlord an Order of Possession effective two days after service on the Tenant.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **Two Days** after service on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: March 21, 2023

Residential Tenancy Branch