



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding K AND G CLAIRE HOLDINGS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated September 25, 2022 pursuant to section 55;
- a Monetary Order of \$100.00 for compensation for monetary loss or other money owed pursuant to section 67 and to retain the security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent DS and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant was assisted during the hearing by SV.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package (the "NDRP Package") and documentary evidence. I find the Tenant was served with the NDRP Package and the Landlord's evidence in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged that she did not serve the Landlord with a copy of her documentary evidence. Under Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As such, I directed the Tenant to give oral testimony regarding her evidence, and I do not consider the Tenant's documentary evidence for the purpose of this application.

Preliminary Matter – Clarification of the Landlord's Claims

I have reviewed the Landlord's application and find that the Landlord's \$100.00 claim for monetary loss is a duplicate claim for reimbursement of the filing fee. Therefore, I have removed this claim pursuant to section 64(3)(c) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on June 1, 2013 and is month-to-month. Rent is \$1,001.00 due on the first day of each month. The Tenant paid a security deposit of \$425.00. The Landlord submitted a copy of the tenancy agreement into evidence.

A copy of the One Month Notice is also submitted into evidence. It is signed by DS on behalf of the Landlord and has an effective date of November 30, 2022. The One Month Notice states the following reason for ending the tenancy:

- Tenant has allowed an unreasonable number of occupants in the unit/sight/park

The One Month Notice provides the following additional details of cause (portion redacted for privacy):

The apartment was rented to the tenant under lease dated May 28, 2014. It included provision for a 7 year old son, [name redacted]. Since then, the tenant has now another adult living with her, and has had two more children. No additional individuals were approved in writing by the landlord, and the number of 5 people now in the 1-bedroom apartment is unreasonable.

DS testified that a copy of the One Month Notice was given in person to the Tenant on September 25, 2022. The Tenant stated she received the One Month Notice in person on September 28, 2022.

DS stated there were complaints from neighbours about too many people in the rental unit. DS stated that the Tenant's boyfriend had kicked the door in twice. DS stated the Tenant has had four months to look for a new place and suggested the end of the month would be reasonable for the Tenant to vacate.

The Tenant confirmed she has three children. The Tenant stated her boyfriend comes to visit but has his own address. The Tenant stated she tried to make an application to dispute the One Month Notice, but acknowledged that she did not submit it.

The Tenant confirmed she is still living in the rental unit and is in the process of finding another place. The Tenant requested to stay until June 2023.

Analysis

1. Is the Landlord entitled to an Order of Possession?

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a notice to end tenancy for cause comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

Based on the Tenant's testimony, I find the Tenant was served with a copy of the One Month Notice on September 28, 2022 in accordance with section 88(a) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. I find the deadline for the Tenant to make an application for dispute resolution was October 8, 2022.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(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.

Furthermore, sections 55(2)(b) and 55(4) of the Act state:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

- (a) grant an order of possession, and
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was served on September 28, 2022, the time for disputing the One Month Notice expired on October 8, 2022, and the Tenant did not submit an application to dispute the One Month Notice by that date.

Therefore, I find the Tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the One Month Notice, or November 30, 2022. I conclude the Landlord is entitled to an Order of Possession without further dispute resolution process under sections 55(2)(b) and 55(4)(a) of the Act.

According to Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession, where the effective date on the notice to end tenancy has already passed, effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided. Relevant factors include the point up to which the rent has been paid and the length of tenancy.

In this case, the effective date of November 30, 2022 has long passed. However, I accept the Tenant has resided in the rental unit for several years and has children in her care, so she will likely require more than two days to vacate. I find the Landlord expressed willingness to work with the Tenant and to allow the Tenant to stay until the end of the month. Therefore, pursuant to section 55(4) of the Act, I grant the Landlord an Order of Possession effective 1:00 pm on March 31, 2023.

2. Is the Landlord entitled to reimbursement of the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to deduct \$100.00 from the Tenant's security deposit in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord's claims for an Order of Possession and to recover the filing are granted.

Pursuant to section 55(4) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on March 31, 2023**. 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.

The Landlord is authorized to deduct **\$100.00** from the Tenant's security deposit on account of the filing fee awarded in this application. The balance of the Tenant's security deposit shall be dealt in accordance with the Act, the regulation, and the parties' tenancy agreement.

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 14, 2023

Residential Tenancy Branch