



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding HOLLYBURN PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC
 CNC-MT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord October 21, 2022 (the "Application"). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 09, 2022 (the "Notice").

During the hearing, the file ending 1181 became relevant and therefore I have joined it with the Application. The file ending 1181 is the Tenant's dispute of the Notice and request for more time to dispute the Notice.

The Agents for the Landlord and Tenant appeared at the hearing. The Agents were going to call a witness at the hearing; however, the witness was not relevant to the issues before me and therefore I did not hear from them. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence for the Application.

The Agents testified that the hearing package and first set of evidence were sent to the Tenant November 04, 2022, by registered mail. At first, the Tenant testified that they did not receive the hearing package. After hearing from the Agents, the Tenant acknowledged receipt of the November 04, 2022 package. I note that the Tenant also testified during the hearing that they never received the Notice but then changed this

testimony after hearing from the Agents. Given the Tenant changed their testimony twice during the hearing regarding what they did and did not receive for this matter, I do not find I can rely on the testimony of the Tenant in this regard. I therefore prefer the testimony of the Agents, which is supported by documentary evidence. I accept that the hearing package and first set of evidence was served on the Tenant in accordance with the *Act* and Rules. I find the Tenant received the Notice, Proof of Service and “landlord-tenant-communication” documents as part of the first package. This is the only documentary evidence relevant to the issues before me.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence noted above as well as all testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Tenant be given more time to dispute the Notice?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. Rent is due on or before the first day of each month.

The Notice was submitted. The Notice has an effective date of October 31, 2022. The grounds for the Notice are causing a significant interference or unreasonable disturbance and assigning or subletting the rental unit without permission.

The Agents testified that the Notice was posted on the Tenant’s door September 09, 2022. The Landlord submitted a Proof of Service showing the Notice was served as stated. The Landlord also submitted an email sent to the Tenant September 09, 2022, at 4:40 p.m., showing the Notice was attached.

At first, the Tenant testified that they had never received or seen the Notice. The Tenant testified that they disputed the Notice and referred to the file ending 1181, which is the Tenant’s dispute of the Notice and request for more time to dispute the Notice

which was filed November 07, 2022. The Tenant testified that they were out of the country September 09, 2022 and had been on and off since March of 2021; however, the Tenant had not submitted evidence to support this. After the Agents pointed to the September 09, 2022 email sent to the Tenant, the Tenant changed their testimony and acknowledged receipt of the Notice in the September 09, 2022 email.

I note that the Tenant's application to dispute the Notice states:

I have recieved the notice of eviction. I was told verbally that my contract had been terminated when I arrived back after several months in the United States. I have not seen the paper work so do not know the cause they used in the filing. I asked to see a copy of the eviction notice but the landlord said that he would not show it to me, it was their property now.

The Tenant did not submit any evidence on either file. I note that the Tenant filed their application disputing the Notice online.

The Agents sought an Order of Possession effective March 31, 2023.

Analysis

The Notice was issued pursuant to section 47 of the *Act*.

I find the Tenant received the Notice September 12, 2022, at the latest because the Tenant acknowledged receiving the Landlord's September 09, 2022 email with the Notice attached. I consider the Notice received September 12, 2023, given section 44 of the *Residential Tenancy Regulation*.

Pursuant to section 47(4) of the *Act*, the Tenant had 10 days from receiving the Notice to dispute it. The Tenant filed their dispute of the Notice November 07, 2022, almost two months late. I understood the Tenant to say they disputed the Notice late because they never received the Notice and this seems to be what the Tenant stated in their application. However, the Tenant acknowledged receiving the September 09, 2022 email from the Landlord with the Notice attached and therefore, the Tenant did receive the Notice. The Tenant has not provided a compelling reason for disputing the Notice late. The Tenant mentioned being out of the country September 09, 2022; however, the Tenant could have disputed the Notice online or had an agent dispute the Notice for them. The Tenant did not provide compelling evidence showing they could not have

disputed the Notice online, which I note they eventually did, or had an agent dispute the Notice in time. Section 66 of the *Act* allows time limits to be extended only in exceptional circumstances. The Tenant has not proven exceptional circumstances prevented them from disputing the Notice in time.

Given the above, the Tenant is not granted more time to dispute the Notice and the dispute is dismissed without leave to re-apply.

Section 47(4) and (5) of the *Act* states:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section **does not make an application for dispute resolution in accordance with subsection (4)**, the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The Tenant is conclusively presumed to have accepted that the tenancy ended October 31, 2022, and had to vacate the rental unit by this date.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Pursuant to section 55(2) of the *Act*, the Landlord is entitled to an Order of Possession and is issued an Order of Possession **effective at 1:00 p.m. March 31, 2023**.

Given file ending 1181 has been dealt with, the parties do not need to appear at the March 20, 2023 hearing and the hearing is cancelled.

Conclusion

The Landlord is issued an Order of Possession **effective at 1:00 p.m. March 31, 2023.** This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

Given file ending 1181 has been dealt with, the parties do not need to appear at the March 20, 2023 hearing and the hearing is cancelled.

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

Dated: March 02, 2023

Residential Tenancy Branch