



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding WIDSTEN PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPC, FFL

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On January 31, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

On February 7, 2023, records indicate that the Notice of Hearing package was ready, and a voicemail was left for the Tenant, where she was advised to pick up this package and serve it to the Landlord by February 10, 2023, at the latest. This requirement to serve the Landlord with this package, within three days, is established by Rule 3.1 of the Rules of Procedure (the “Rules”).

On March 14, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Cause based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with B.B. attending as an advocate for the Tenant. S.W. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they

were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she did not serve the Notice of Hearing package to the Landlord because she was not aware that she was required to. She was informed of the record of contact on February 7, 2023, and she confirmed the accuracy of her phone number on her Application. However, she testified that she never received a voicemail. In addition, I find it important to note that records also indicate that the Tenant was called on May 2, 2023, to inquire if this hearing was still necessary, but the Tenant did not answer her phone. Given that it appears as if the Tenant does not pay close attention to her phone, I find it more likely than not that a voicemail was left for her on February 7, 2023, regarding this hearing package.

Regardless, it is clear that the Tenant did not serve the Notice of Hearing package to the Landlord. The requirement to serve this package is to inform the other party of a dispute, and is necessary to avoid possible prejudice to the Landlord. As this was not served, the Tenant's Application is dismissed in its entirety.

S.W. advised that the Tenant was served the Landlord's Notice of Hearing and evidence package by registered mail on March 15, 2023, and he stated that it was delivered on March 17, 2023. B.B. confirmed that the Tenant received this package in mid-March 2023. Given that the Tenant acknowledged that she received this package, and as it was served in a manner permitted under Section 89 of the *Act*, I am satisfied that the Tenant was duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

B.B. advised that the Tenant's evidence was served to the Landlord by hand, but she was not sure when this was done. S.W. confirmed that he received this evidence on May 16, 2023. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted it and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2021, that the rent was established at a subsidized amount of \$554.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

All parties also agreed that the Notice was served to the Tenant by hand on or around January 25, 2023. The reason the Notice was served was because 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 effective end date of the tenancy was noted as February 28, 2023, on the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Section 55 of the *Act* states that “If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.”

When reviewing the Notice, I am satisfied that this form clearly contained all of the information required to constitute a valid Notice. As the Tenant's Application has been dismissed in its entirety, I grant the Landlord an Order of Possession. However, S.W. advised that he was willing to extend the Order of Possession date to June 30, 2023, to allow the Tenant more time to vacate or to settle their differences.

Based on this request, and pursuant to Section 55 of the *Act*, I exercise my authority to extend the effective date of the Notice. Consequently, the Order of Possession takes effect at **1:00 PM on June 30, 2023**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective on **June 30, 2023, at 1:00 PM after service of this Order** 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 25, 2023

Residential Tenancy Branch