



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC-MT, OPC, FFL

Introduction and Preliminary Matters

This hearing dealt with cross-applications filed by the parties. On February 15, 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”) and seeking more time to cancel the Notice pursuant to Section 66 of the *Act*.

On February 15, 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 W.H. attending as an advocate for the Tenant. The Tenant confirmed the correct spelling of her name and the Style of Cause on the first page of this Decision has been amended to reflect this correction. The Landlord attended the hearing as well.

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.

Service of the respective parties' Notice of Hearing and evidence packages were discussed, and any issues related to service were addressed. As such, I have accepted all parties' documentary evidence 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 Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, 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 December 1, 2009, that the rent was currently established at an amount of \$791.75 per month, and that it was due on the first day of each month. A security deposit of \$375.00 was also 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 being attached to the Tenant's door on January 27, 2023. The reasons the Landlord served the Notice

were because the “Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The effective end date of the tenancy was noted as February 28, 2023, on the Notice. The Tenant confirmed that she understood that this Notice was for her at the dispute address, despite this not being indicated correctly on the Notice.

When the Tenant was asked why she did not dispute the Notice in time, she stated that she sought out the assistance of an advocate on February 6, 2023, but this person could not successfully dispute the Notice online. W.H. advised that the advocate had difficulties securing a BCeID for the Tenant and was unable to help her. She referenced a letter from this advocate corroborating this testimony. W.H. testified that the Tenant informed her on or around February 15, 2023, that she only discovered that the advocate did not dispute the Notice on time. So, she stated that she immediately disputed the Notice on behalf of the Tenant.

The Landlord advised of his doubts regarding the advocate’s letter. Moreover, he pointed to text messages submitted as documentary evidence to demonstrate that the Tenant had not disputed the Notice as of February 13, 2023, and was just alerted to that fact then. It is his position that the Tenant only took action to dispute the Notice after this date.

As the One Month Notice to End Tenancy for Cause was received by the Tenant, according to her Application, on January 27, 2023, Section 47(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that “*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 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 tenth day fell on Monday February 6, 2023, the Tenant must have made this Application by that day at the latest. However, the undisputed evidence is that the Tenant made her Application on February 15, 2023. As the Tenant was late in making this Application, she requested more time to do so.

Pursuant to Section 66 of the *Act*, I have the authority to extend the time frame to dispute the One Month Notice to End Tenancy for Cause “only in exceptional circumstances.” When the Tenant was questioned if there were any exceptional

circumstances that prevented her from disputing the One Month Notice to End Tenancy for Cause within the required time frame, W.H. indicated that the Tenant suffers from a brain injury, and that the Tenant attempted to have an advocate assist her, but this failure to file on time was due to errors made by the advocate.

Based on Section 66 of the *Act*, I have the authority to determine whether to consider if the Tenant's testimony and reasons would constitute exceptional circumstances. When reviewing the testimony and evidence before me, I am satisfied that the Tenant sought out an advocate on the last day to dispute the Notice and that there were some problems caused by the advocate that prevented her from being able to dispute the Notice on time. While I acknowledge that this Notice was disputed late, and not in accordance with the *Act*, I find it appropriate to grant the Tenant more time to dispute the Notice.

In turning to the reasons the Notice was served, the Landlord advised that the Tenant allowed a guest and his dog to reside with her on or around September 2022. He testified that the Tenant and the occupant fought intensely, had loud arguments, screamed, and threw objects in the rental unit. He stated that this disturbed other residents in the building, and they complained to him about the circumstances. He stated that he texted the Tenant about these issues multiple times in November 2022, and warned her verbally as well; however, the situation did not improve.

He advised that this guest was also aggressive and threatened him. While he indicated that this guest did eventually move out at the end of November 2022, he stated that he informed the Tenant that if this guest returned, a Notice would be served. He testified that this guest then returned in January 2023, and the same problems persisted. He referenced the documentary evidence submitted to support this position.

W.H. advised that the Tenant was not aware of the actions or threats that her guest levied at the Landlord. She acknowledged that the Tenant allowed this guest into the rental unit, but there was "not much fighting". She acknowledged that the Tenant was aware of the issues caused by her and her guest's conduct. She confirmed that the guest left the rental unit at the end of November 2022, but returned in January 2023. It is her position that the Tenant was in an abusive relationship with her guest and that she attempted to deal with the guest as best as she could. She stated that the service of the Notice was the documentation that was necessary to have the police involved to have this person removed. Now that this person has been officially removed from the situation, there will be no more issues from the Tenant as the problem has been resolved.

The Tenant acknowledged that there were issues with her guest, and that he did return to the rental unit in January 2023. She confirmed that the Landlord did raise concerns to her about these issues and that she did nothing to correct them until her guest was removed after the Notice was served. However, she stated that she was unaware of any actions or threats that her guest made to the Landlord.

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.”

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. Given that the Tenant was aware that this Notice was for her at the rental unit that she resided in, I find that this was a valid Notice. As such, I am satisfied that the Notice meets all of the requirements of Section 52.

I find it important to note that the Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(ii) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

When reviewing the totality of the evidence, the consistent and undisputed testimony before me is that the Tenant acknowledged that she allowed a guest of hers to reside in the rental unit starting on or around September 2022. Moreover, she confirmed that she was warned by the Landlord that the conduct of her and her guest was inappropriate and was disturbing other residents of the building. While this person did leave the rental unit for a time, the undisputed evidence is that he returned in January 2023, and that the problems persisted, resulting in the Notice being served.

While I acknowledge that it is possible that the Tenant finally had this person removed, this was done after the Notice was served. Furthermore, despite a brief period of time between late November 2022 and early January 2023, the Tenant or her guest engaged in a series of behaviours which significantly disturbed other residents or the Landlord.

I note that the salient issue that I have to consider here pertains to whether or not the Tenant or guest behaved in a manner that justified service of the Notice. Based on my assessment of the evidence presented, I prefer the Landlord's evidence on the whole as it is consistent with the Tenant's admitted testimony.

Ultimately, I find it more likely than not that the Tenant or her guest engaged in unnecessary, unacceptable, aggressive, and belligerent behaviours that are wholly inexcusable. While the Tenant may have been in a difficult relationship, the Tenant is still responsible for any conduct of her or her guest which could jeopardize her tenancy. As such, I am satisfied by the actions of the Tenant or her guest substantiated the grounds for ending the tenancy.

As the Landlord's Notice is valid, and as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession under Sections 47 and 55 of the *Act*.

The effective end date of the tenancy of February 28, 2023, on the One Month Notice to End Tenancy for Cause, is changed to the nearest date that complies with the law.

Since that effective date has passed, I grant the Order of Possession effective on **June 30, 2023, at 1:00 PM** after service of this Order on the Tenant.

As the Landlord was successful in his Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his Application. Pursuant to Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

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.

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: June 12, 2023

Residential Tenancy Branch