



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding BRITISH COLUMBIA HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNC-MT
For the landlord: OPC, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Act is for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47; and
- an extension of the timeline for disputing the Notice, pursuant to section 66.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 47 and 55; and
- an authorization to recover the filing fee, under section 72.

I conducted a hearing on April 18, 2023 and issue an interim decision dated April 19, 2023 (the interim decision). This decision should be read in conjunction with the interim decision dated April 19, 2023.

On April 18, 2023 both parties attended the hearing and tenant RL was assisted by advocate LC.

I left the teleconference connection open until 9:41 A.M. on July 13, 2023 to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord's agent DC (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service

The tenant confirmed receipt of the landlord's notice of hearing and evidence (the landlord's materials) and that he had enough time to review it.

The landlord served again the materials by registered mail on July 28, 2023. The tracking number is recorded on the cover page of this decision.

The landlord affirmed he did not receive the tenant's notice of hearing.

Based on the undisputed testimony, I find the landlord served the landlord's materials in accordance with section 89(1) of the Act and that the tenant did not serve the tenant's notice of hearing.

Rule of Procedure 3.1 states the applicant must serve the notice of hearing within 3 days.

The interim decision states the parties or their agents must attend the adjourned hearing.

As the tenant did not serve the tenant's notice of hearing and did not attend the adjourned hearing, I dismiss the tenant's application with leave to reapply.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord stated the tenancy started on April 1, 2021. Monthly rent is \$328.00, due on the first day of the month. The tenancy agreement was submitted into evidence.

The landlord testified he attached the Notice to the rental's front door on September 29, 2022 at 1:45 pm. The tenant confirmed receipt of the Notice.

The landlord said the tenant continues to occupy the rental unit.

The landlord submitted the Notice dated June 29, 2022 into evidence. The effective date is October 31, 2022. The reasons to end the tenancy are:

- The tenant or a person permitted on the property by the tenant has
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property.
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant
 - Jeopardize a lawful right or interest of another occupant or the landlord.

The details of the events are:

On September 17, 2022 at approximately 5:00AM and on September 18, 2022 at approximately 4:30AM the tenant entered the laundry room at 6640 Elliott Street and forced entry into the storage room and removed an appliance dolly, 2 closet doors, garbage bin, paper rolls and other items without authorization from the landlord. Estimated value of the items taken is estimated at \$3,675.00. These events have been Recorded in the security video system. Police case number: [redacted for privacy]. Police attended the tenant's unit on September 28, 2022 and found all the items in the tenant's rental unit.

Analysis

Based on the undisputed testimony, I find the landlord served and the tenant received the Notice on September 29, 2022, in accordance with section 88(g) of the Act.

Section 55(1) of the Act states that if the tenant's application to dispute the Notice is dismissed, the landlord is entitled to have an order of possession if the Notice complies with section 52 of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

As the tenant is occupying the rental unit and the effective date of the Notice is October 31, 2022, I find that the landlord is entitled to an order of possession, pursuant to section 55(1) of the Act.

RTB Policy Guideline 54 provides the arbitrator may extend the effective date of an order of possession, considering the length of the tenancy.

As the tenant has been occupying the rental unit since April 2021, I find it reasonable to extend the effective date of the order of possession to July 31, 2023.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

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

Conclusion

Pursuant to section 55(1) of the Act, I grant an order of possession to the landlord effective on July 31, 2023. 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

Pursuant to section 72 of the Act, I grant a monetary order in the amount of \$100.00 for the recovery of the filing fee. 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.

The landlord must serve the order of possession and the monetary order in accordance with section 88 of the Act as soon as possible.

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: July 13, 2023