



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding Elevate Performance Realty &
Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPC, FFL
Tenant: CNC, OLC, FFT

Introduction

On May 2, 2023, the Landlord filed their Application at the Residential Tenancy Branch:

- for an order of possession for the rental unit
- for reimbursement of the Application filing fee.

On May 4, 2023, the Tenants (hereinafter, the “Tenant”) filed their Application at the Residential Tenancy Branch:

- to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- for the Landlord’s compliance with the legislation and/or the tenancy agreement;
- for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 24, 2023. Both parties attended the teleconference hearing.

At the start of the hearing, each party stated they received the Notice of Dispute Resolution Proceeding and evidence from the other. On the basis of this correct service, and full evidence disclosure, I proceeded with the hearing as scheduled.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement for the Application fee, pursuant to s. 72 of the *Act*?

Is the Landlord entitled to reimbursement for the Application fee, pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and submissions before me. Only the evidence and submissions relevant to my conclusion, and the outcome of this hearing, are set out in this decision.

The Landlord submitted a copy of the tenancy agreement for the rental unit. The tenancy started on January 16, 2019, and the tenancy at the time the Landlord served the One-Month Notice was on a month-to-month basis. The rent amount was \$2,500 was payable on the first of each month.

The Landlord issued the One-Month Notice on March 27, 2023. They listed the Tenant's continued smoking in the rental unit, despite warnings, and with evidence stemming from the Landlord's March 27, 2023 inspection of the rental unit. The Landlord also listed their request to the Tenant for tenant insurance that the Tenant did not comply with.

The One-Month Notice gives the end-of-tenancy date, on which the Tenant must move out, as April 30, 2023.

The Landlord provided copies of their emails to the Tenant asking for tenant insurance, and letters to the Tenant outlining the smoking in the rental unit with reference to the tenancy agreement s. 13. The Landlord provided a timeline of events for my review, disclosed to the Tenant as evidence. This shows consecutive observations and associated warnings from March 2021 onwards. The final incident is listed in the evidence as July 4, 2023, i.e., after the Landlord applied for an order of possession associated with the One-Month Notice.

In the hearing, the Tenant stated they were not disputing the Landlord's observations of smoking. The Tenant stated they "dropped the ball" on insurance.

The remainder of the hearing time was the Tenant querying on an appropriate move-out time from the rental unit. The Tenant proposed the final day of August as the end-of-tenancy date and the Landlord in the hearing agreed to this.

Analysis

The *Act* s. 47 sets out the reasons for which a Landlord may give a One-Month Notice. This includes the reason indicated on the One-Month Notice that the Landlord served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy. I find the Landlord provided sufficient evidence of the terms of the original agreement, their requests/warnings to the Tenant during the tenancy, and the fact that the problems continued.

I find the Tenant accepted that they breached the agreement during the tenancy. I find the reason that the Tenant brought this Application to the Residential Tenancy Branch as they did was in order to set back the end-of-tenancy date until after the scheduled hearing, some time after the end-of-tenancy date that the Landlord set on the One-Month Notice. For this reason, I dismiss the Tenant's Application to cancel the One-Month Notice, without leave to reapply.

The *Act* s. 52 provides:

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) . . . state the grounds for ending the tenancy,
- . . . and
- (e) when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 52 regarding form and content.

I find the Landlord provided sufficient evidence to show the Tenant violated terms that were set out explicitly in the tenancy agreement.

The *Act* s. 55(1) states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of s. 52 of the *Act*.

Above, I dismissed the Tenant's Application to dispute the One-Month Notice; therefore, I find the Landlord here is entitled to an Order of Possession, as per s. 55(1).

Because the Landlord was successful in this Application, I grant reimbursement of the full amount of the Application filing fee. I order the Landlord to retain \$100 from the Tenant's security deposit of \$1,250 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit of \$1,250 must be dealt with after the end of this tenancy, in accordance with s. 38 of the *Act*.

The Tenant was unsuccessful on this Application; therefore, I make no award to them for reimbursement of the Application filing fee.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the One-Month Notice, without leave to reapply. I dismiss the other grounds on their Application, without leave to reapply.

I grant an Order of Possession to the Landlord, effective August 31, 2023 at 11:59pm. Should the Tenant fail to comply with this Order of Possession, the Landlord may file this Order of Possession with the Supreme Court of British Columbia where it may be 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 s. 9.1(1) of the *Act*.

Dated: August 25, 2023

Residential Tenancy Branch