



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: CNC, LRE
Landlord: OPC, FFL

Introduction

On April 25, 2023, the Tenant filed their Application at the Residential Tenancy Branch:

- to dispute a One-Month Notice to End Tenancy for Cause (the “One-Month Notice”);
- to suspend or set conditions on the Landlord’s right to enter the rental unit.

On May 4, 2023, the Landlord submitted their own Application:

- for an Order of Possession in line with a One Month Notice;
- 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 15, 2023. The Landlord attended the hearing; the Tenant did not attend.

Preliminary Matter – Tenant’s attendance

The Tenant did not attend the hearing, although I left the teleconference hearing open until 11:16am to enable them to call in to this teleconference hearing scheduled for 11:00am. I confirmed correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding generated when the Tenant applied. I also confirmed throughout the duration of the call that the Tenant was not in attendance.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides that if a party or their agent fails to attend the hearing, an arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the Tenant's Application in its entirety, without leave to reapply.

Additionally, the Landlord in the hearing stated that the Tenant was scheduled to move out from the rental unit on that same day. The Landlord was going to meet with the Tenant at 5:00pm to inspect the condition of the rental unit.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

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

Background and Evidence

The Landlord provided a copy of the tenancy agreement they had in place with the Tenant. The parties signed the agreement on March 19, 2023 for the tenancy starting on April 1, 2023. The rent amount was \$4,000 per month, payable on the 1st day of each month.

The Addendum to the agreement, also provided by the Landlord, specifies that "No guests may occupy the property for longer than two weeks without obtaining consent from the Landlord." And: "The Tenant has received a copy of the strata's rules and bylaws and will sign the "Form K – Notice of Tenant's Responsibilities". The Tenant signed the Addendum, as shown in the Landlord's evidence, on March 19, 2023. In the hearing, the Landlord stated that they provided a copy of the "Form K" document to the Tenant.

In their evidence, the Landlord provided a copy of the letters from the Strata to the Landlord dated April 14 and April 21, 2023. These notified the Landlord of a bylaw violation, specifically involving short-term rentals. This contained information on an Airbnb advertisement and set out the exact bylaw reference.

Also in their evidence, the Landlord provided evidence in the form of video captures and images from security cameras, cross-referenced with short-term visitors stays in the rental unit. This was attested to by the building concierge.

The Landlord in the hearing stated they also served the One-Month Notice to the Tenant for the repeated late payment of rent. They provided a record of the late rent payments from May 2023 onwards, also the etransfer payment records. For the month of May the Tenant paid \$3,000 on May 2, and \$1,000 on May 3. In June, the Tenant made four payments: \$2,500 (June 1); \$1,000 (June 2); \$385 (June 5); and \$115 (June 6). In July, payments were \$3,000 (July 5), and \$1,000 (July 7). As of the date of the hearing on August 14, the Tenant did not pay any rent amount.

As shown in the Landlord's evidence, they signed and served a One-Month Notice on April 17, 2023, for the end-of-tenancy date of May 31, 2023.

On page 2, the Landlord indicated the following reason for ending the tenancy:

- ☐ Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The Landlord provided more detail on the same page:

The tenant has been running an illegal short-term rental in the unit. The tenancy agreement prohibits the use of the unit for any sublets/short-term accommodation. Strata bylaws for the building also ban short-term rentals.

Analysis

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The *Act* s. 47 states, in part:

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

- (b) the tenant is repeatedly late paying rent

- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [of the *Act*]

The *Act* s. 47(4) states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the landlord issued the One-Month Notice pursuant to s. 47 and I accept the Landlord's evidence that they served this document to the Tenant by registered mail and via email to the Tenant's address for service.

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 a term that was set out explicitly in the Addendum regarding short-term rentals. Further, the Landlord provided evidence that the Tenant was repeatedly late paying rent.

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 \$2,000 in full satisfaction of the monetary award for the filing fee. The remainder of the Tenant's security deposit of \$1,900 must be dealt with after the end of this tenancy, in accordance with s. 38 of the *Act*.

Conclusion

For the reasons outlined above, I dismiss the Tenant's Application for cancellation of the April 17, 2023 One-Month Notice, without leave to reapply. I dismiss the Tenant's Application in full.

I grant an Order of Possession to the Landlord, **effective TWO DAYS after they serve it to the Tenant**. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I authorize the Landlord to retain the amount of \$100 from the Tenant's security deposit.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 16, 2023

Residential Tenancy Branch