

DECISION

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”):

The tenant applied for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 47 of the Act

The landlord applied for:

an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55 of the Act

MN and JV appeared as agents for the corporate landlord.

The landlord was cautioned that recording of the hearing is prohibited pursuant to Rule of Procedure 6.11. The landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Service of the Notice of Dispute Resolution Proceeding Package (the “Proceeding Package”)

MN testified that they served the tenant with their Proceeding Package on May 19, 2023. In support of this, MN provided a receipt containing a Canada Post Tracking Number.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if sent by registered mail on the fifth day after it is mailed. In this case, the tenant is deemed to have received the proceeding package on May 24, 2023, in accordance with section 90(a) of the Act.

Preliminary Matter

Although I waited until 11:10 a.m. to enable the tenant to connect with the teleconference hearing scheduled for 11:00 a.m., the tenant did not attend.

Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In accordance with the above, the hearing proceeded in the tenant's absence. I order the tenant's application for cancellation of the One Month Notice is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Background and Evidence

I have reviewed all evidence, including the testimony of MN, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began by way of a written tenancy agreement on June 15, 2021. Monthly rent is \$375.00, due on the first day of the month. The landlord collected a security deposit in the amount of \$187.50 which they continue to hold in trust.

MN testified that the One Month Notice was served to the Tenant on May 1, 2023, by attaching a copy to the door of the rental property. In support of this MN submitted a Proof of Service Document indicating the same.

The One Month Notice is included in the evidence and indicates that the reason for the notice is that 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.

In the Details section of the One Month Notice, it states that the tenant was verbally aggressive and assaulted staff by spitting on them on February 28, 2023, and smashing their fingers in the door on April 20, 2023.

MN testified that the police were called on February 28, 2023, when an altercation took place and the tenant spat in the face of a staff member. MN provided a police file number which I have not included in this decision for privacy reasons.

MN further noted that on April 20, 2023, the tenant attended the office of the rental property, used discriminatory language, threatened to kill a staff member, and slammed the staff member's hand in a door. MN drew my attention to video evidence and incidents report that are included in their evidence to support their claims.

The landlord is seeking an Order of Possession based on the One Month Notice.

Analysis

I accept the uncontested affirmed evidence of MN that the tenant was served with the One Month Notice on May 1, 2023, by attaching a copy of the Notice to the door of the rental unit.

Pursuant to section 90 of the Act a document served in accordance with section 89 of the Act is deemed to be received if given or served by attaching to a door, on the third day after it is attached. In this case, the tenant is deemed to have received the One Month Notice on May 4, 2023, in accordance with section 90(c) of the Act.

The effective date of the One Month Notice is corrected to June 30, 2023, based on section 53(2) of Act.

Section 47 of the Act allows a landlord to end tenancy by giving notice to end the tenancy provided they have sufficient cause to do so. The onus is on the landlord to prove that they have sufficient cause to issue the Notice.

Based on the undisputed testimony and evidence presented on the landlord's behalf, I find that the landlord has met the onus which is upon them, and I find that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Pursuant to section 55(1) of the Act, if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, the director must grant an order of possession of the rental unit if: (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and, (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the One Month Notice dated May 1, 2023, having corrected the effective date, I find that the One Month Notice was completed in accordance with the requirements of section 52 of the Act.

Based on the foregoing, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant. The tenant has two days to vacate the rental unit from the date of service or deemed service.

Conclusion

The landlords are granted an order of possession which will be effective two days after service upon the tenant. The Order of Possession may be filed in 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: August 31, 2023

Residential Tenancy Branch