



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Tenant: CNR, CNC, DRI, OLC, FFT
Landlord: OPC, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

While the landlord attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony that on July 17, 2023, the landlord served the tenant with their Application for Dispute Resolution hearing package and evidence by way of registered mail. The landlord provided proof of service and the tracking information in their evidentiary materials. In accordance with sections 88, 89, and 90 of the Act, I find the tenant deemed served with the landlord's application and evidence on July 22, 2023, five days after mailing. The landlord confirmed receipt of the tenant's application and evidence package.

Although the tenant's application references a 10 Day Notice, the landlord testified that they had served the tenant with only a 1 Month Notice on May 28, 2023, which was personally served on the tenant, and was disputed by the tenant on July 6, 2023.

Rule 7.3 of the Rules of Procedure provides as follows:

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

Accordingly, **in the absence of any submissions in this hearing from the tenant, I order the tenant's entire application dismissed without leave to reapply.**

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me and my findings around it are set out below.

This month-to-month tenancy began approximately 5 or 6 years ago. Monthly rent is currently set at \$1,150.00, payable on the first of the month. The landlord could not recall the exact amount of the security deposit paid by the tenant, which was around \$300.00 to \$325.00.

The landlord issued the 1 Month Notice on the following grounds:

- i) The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that they reside in the upstairs portion of the home, and had attempted to speak to the tenant about excessive noise. The landlord testified that the tenant responded in an aggressive and intimidating manner, and used abusive language. The landlord testified that the tenant has refused to acknowledge the landlord's concerns, and would respond in the same manner whenever the landlord would attempt to talk to the tenant.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) 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
- (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.

I am satisfied that that the landlord had provided evidence to support that the tenant had unreasonably disturbed the landlord. A copy of the 1 Month Notice was submitted for this hearing, and I find that the landlord's 1 Month Notice is valid, and complies with section 52 of the *Act*, which states that the Notice 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) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice, June 30, 2023. In this case, this required the tenant and anyone on the premises to vacate the premises by June 30, 2023. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application from the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

I find that the landlord is entitled to an Order of Possession.

I grant an Order of Possession to the landlord effective **two days 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.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application from the tenant. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

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 28, 2023

Residential Tenancy Branch