



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding IMMOBILIERE CANADA INVESTMENT C/O MARTELLO
PROPERTY SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, FFT / OPC, FFL

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant requests the following:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the of the Act;
- An order for the Landlord to comply with the Act, *Residential Tenancy Regulation* (the Regulation), or the tenancy agreement under section 62 of the Act; and
- To recover the cost of the filing fee for the Application from the Landlord under section 72 of the Act.

The Landlord requests the following:

- An Order of Possession based on the Notice under section 55(2)(b) of the Act; and
- To recover the cost of filing fee for the Application from the Tenant under section 72 of the Act.

An Agent for the Landlord called into this teleconference at the date and time set for the hearing of this matter. The Landlord's Agent affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Although I waited until 9:48 AM to enable the Tenant to connect with this teleconference hearing scheduled for 9:30 AM, the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, the hearing proceeded in the absence of the Tenant.

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord's Agent testified they served the Notice of Dispute Resolution Package (Materials) and evidence on the Tenant by registered mail on September 29, 2023.

The Canada Post tracking number for the package for the Tenant was provided by the Landlord as evidence. A copy of the postage label for the package sent to the Tenant was also included into evidence. I find the address on the postage label matches the address for the rental unit per the Application.

The Landlord's Agent confirmed receipt of the Materials and evidence for the Tenant's Application by registered mail and raised no issues with service.

In light of the above evidence from the Landlord and affirmed testimony of the Landlord's Agent, I find that per section 89 of the Act, the Landlord's Materials were sufficiently served to the Tenant and were deemed received on September 4, 2023, the fifth day after mailing per the provisions of section 90(a) of the Act.

I also find the Tenant's Materials and evidence were served onto the Landlord in accordance with the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation, or tenancy agreement?
3. Are either party entitled to recover the filing fee for their Applications?

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The Landlord's Agent confirmed the following regarding the tenancy:

- The tenancy commenced on January 15, 2022.
- Rent is currently \$1,881.90 per month, due on the first day of the month.
- A security deposit of \$922.50 was paid by the Tenant which the Landlord still holds.
- There is a written tenancy agreement, which was entered into evidence by the Landlord.
- The rental unit is still occupied by two individuals.

A copy of the Notice was entered into evidence. The Notice is signed and dated July 31, 2023 and provides an effective date of August 31, 2023. The reason for ending the tenancy, per the Notice is the "tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent".

The Landlord's Agent provided the following undisputed testimony. In April 2023 they found out the Tenant had sublet the rental unit to two individuals. They reached out to the Tenant to find out who the individuals were and explore the possibility of having the individuals added to the tenancy agreement.

The Tenant was apparently residing in Asia which made contacting them difficult. They finally connected with the Tenant via telephone in July 2023. During the conversation, the Tenant indicated the two individuals occupying the rental unit were family and were their guests, though they did not indicate how long they would be staying.

The Landlord's Agent asked the Tenant to submit an application for the two individuals so they could be screened and added to the tenancy agreement, but the Tenant failed to provide this information. As a result, a breach letter was sent to the Tenant on July 11, 2023, which advised if the breach was not corrected by July 31, 2023 a Notice to End Tenancy would be issued.

As there was still no information about the individuals and they still occupied the rental unit, the Notice was issued in person on July 31, 2023 to one of the individuals at the rental unit.

There have been multiple complaints from other residents of the residential property regarding the individuals about them being noisy, behaving inappropriately and being confrontational. The other residents did not want to attend the hearing to testify out of fear of retaliation. There is an open police file involving the individuals.

The Tenant has continued to pay rent to the Landlord. The Landlord's Agent recently received an email from the individuals saying they were not family of the Tenant and they had been paying rent to the Tenant. The Landlord seeks an end to tenancy and an Order of Possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Landlord entitled to an Order of Possession based on the Notice?

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(1) of the Act provides the circumstances under which a landlord may issue a Notice to End Tenancy for Cause.

Based on the evidence before me and the undisputed testimony of the Landlord's Agent, I find the Notice was served in accordance with section 89(2)(c) of the Act and deemed received on July 31, 2023, the same day it is served, per section 90 of the Act.

Section 47(4) of the Act states that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice. The Tenant confirmed in their Application that they received the Notice on July

31, 2023 and the Application was filed on August 8, 2023. Given this, I find that the Tenant filed their Application within the timeframe set out in Section 47(4) of the Act.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

There is one reason provided on the Notice which is echoed in section 47(1)(i) of the Act, which provides that 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. I also find the Notice complies with form and content requirements set out in section 52 of the Act.

Section 1 of the Act defines a sublease agreement as a tenancy agreement where a tenant transfers their rights under a tenancy agreement to a subtenant for a period shorter than the term of the tenant's tenancy agreement, and the subtenant agrees to vacate the rental unit at the end of the term of the sublease agreement.

The sublease agreement must also specify the date when the agreement ends. Policy Guideline 19 on Assignment and Sublet also confirms that sublease agreements are temporary, unlike assignments which are permanent, and the original tenant retains their interest in their tenancy.

The Act does not provide for instances where a sublease occurs in a month-to-month tenancy, as is the case here, though it does not specifically exclude the Act from applying to them, as set out in Policy Guideline 19.

Based on the evidence before me, the undisputed testimony of the Landlord's Agent and on a balance of probabilities, I find the Tenant has entered into a sublease agreement for the rental unit without the permission of the Landlord. Given that the Tenant appears to have vacated the rental unit, provided exclusive occupancy to two individuals not listed on the tenancy agreement and has received rent from them whilst continuing to pay rent to the Landlord, I find this is a bona fide sublease and not an instance of additional occupants or room mates residing in the rental unit.

I therefore find the Landlord had sufficient cause to issue the Notice and is entitled to end the tenancy under section 47(1)(i) of the Act. I grant the Landlord's Application and dismiss the Tenant's Application without leave to reapply.

Section 55(1) of the Act states that if a tenant disputes a Notice to End Tenancy, the arbitrator must grant an Order of Possession if the Notice to End Tenancy complies with the form and content requirements set out in section 52 of the Act and the tenant's application disputing the Notice to End Tenancy is dismissed.

Given the above, the Landlord is entitled to an Order of Possession under section 55(1) of the Act. As the deemed effective date of the Notice has passed, I grant the Landlord an Order of Possession effective two days after service. I find the tenancy ended December 4, 2023.

Is the Tenant entitled to an order for the Landlord to comply with the Act, Regulation, or tenancy agreement?

Given that the Tenant did not attend the hearing so advanced no evidence or arguments in support of their claim and as the tenancy is ended as previously stated in this Decision, the matter is in any case moot. Therefore, I dismiss without leave to reapply the Tenant's request for the Landlord to comply with the Act, Regulation, or tenancy agreement.

Are either party entitled to recover the filing fee for their Applications?

As the Landlord has been successful in their Application, I order the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

In accordance with the offsetting provision of section 72 of the Act, the Landlord may retain \$100.00 from the Tenant's security deposit in full satisfaction of the payment order.

As the Tenant was not successful in this Application, their request to recover the filing fee from the Landlord under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlord's Application is granted.

The Landlord is issued an Order of Possession. 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. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia and 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 Section 9.1(1) of the Act.

Dated: December 04, 2023

Residential Tenancy Branch