



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, OPC-DR

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for an order of possession under sections 47 and 55 of the Act.

Landlord J.S. and Landlord B.C. attended the hearing.

No one attended the hearing for the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Preliminary Matters

The Landlord initially filed its application for dispute resolution regarding a One Month Notice to End Tenancy issued May 25, 2023, under the first noted application number that appears on the cover page to this Decision. Thereafter, it filed a direct request application based upon the same One Month Notice to End Tenancy, which was assigned the additional file number that appears on the cover page to this Decision.

On July 2, 2023, the Landlord served the proceeding package and copies of all evidence it submitted to the Tenant by Canada Post registered mail. The Landlord filed a Proof of Service and copy of the Canada Post customer receipt with tracking number to confirm this service. The Landlord stated that the package had not been returned by Canada Post.

On November 30, 2023, the Landlord again served the proceeding package for the direct request application together with copies of evidence submitted to the Tenant by Canada Post registered mail. The Landlord provided a completed Proof of Service and copy of the Canada Post customer receipt with tracking number to confirm this service. Again, the Landlord stated that the registered mail package had not been returned by Canada Post.

I find the Tenant was deemed served on the fifth day after each date the Landlord sent the proceeding package to the Tenant by registered mail as provided under section 89(1) of the Act.

The Tenant submitted no evidence in this hearing.

Background and Evidence

While the Landlord attended the hearing by way of conference call, the Tenant did not. The Landlord who attended the hearing was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Commencement of the hearing: The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

I have reviewed the evidence, including the Landlord's agents' testimony, but will refer only to what I find relevant to my decision.

Evidence was provided that establishes this tenancy began on October 21, 2022, on a month-to-month basis. The monthly rent is \$375.00 per month. The Landlord provides subsidized housing to marginalized segments of the population. The Landlord's agent C.B. testified that the population served may receive, on their own, mental health services, but it is not the function nor purpose of the subsidized housing for the Landlord to provide those services to tenants. A security deposit in the amount of \$187.50 was provided by the Tenant at the start of the tenancy, which the Landlord continues to hold in trust. A copy of the tenancy agreement was submitted in evidence.

On May 25, 2023, the Landlord issued a One Month Notice to End Tenancy for Cause. The Notice was served to the Tenant by attaching the Notice, together with a detailed letter concerning the reasons for issuing the Notice, to the rental unit door. The Landlord submitted a completed Proof of Service form. The Notice provided that the

grounds for issuance were: the Tenant had significantly interfered with or unreasonably disturbed other occupants; had placed the Landlord's property at significant risk; and, had breached a material term of the tenancy agreement. The Landlord's Notice set forth detailed incidents where the Tenant had breached the tenancy agreement by permitting an individual who had been banned onto the premises; had several complaints regarding noise lodged against him; had stolen other occupants' and the Landlord's property; and, had started fires in his rental unit.

The Landlord's agent C.B. testified that numerous complaints had been lodged against the Tenant for excessive noise that disturbed other tenants. Additionally, the Tenant had repeatedly allowed access to the building an individual the Landlord had previously banned from entry. The Tenant had been made aware of these infractions in writing from the Landlord.

Analysis

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice.

In this case, I find the Tenant did not file an application for dispute resolution requesting that the One Month Notice be cancelled, and is therefore presumed to have accepted the end of the tenancy.

Moreover, based upon the evidence before me, the testimony of the Landlord's agents, and on a balance of probabilities, I find the Landlord has provided evidence sufficient to establish, on a balance of probabilities, that the Landlord had sufficient cause to issue the One Month Notice to the Tenant and obtain an end to this tenancy.

The Landlord provided significant documentation of noise complaints concerning the Tenant from other occupants and tenants in the building. The Landlord documented each instance and followed-up with the Tenant advising him of the infraction and requesting compliance to reduce noise. Additionally, the Landlord's agents testified and submitted evidence to establish that the Tenant had engaged in acts of theft of the Landlord's property (an air conditioning unit in the lobby of the building), resulting in the filing of complaints with the local police department. The Tenant had also engaged in the theft of another individual's personal property (a duffel bag) which was later found in the Tenant's unit. The Landlords' agents detailed two incidents where the Tenant had set fires in his unit, jeopardizing the safety of all in the building. Additionally, the Landlords' agents testified to the general squalor the Tenant maintained in the unit, which alone posed a fire safety issue. The Landlord's agent C.B. also testified regarding a complaint received from a neighboring tenant that the Tenant was

continuously running hot water in the bathroom, which was a safety issue to others as well as potential damage to the Landlord's property.

Upon inquiry as to whether the Tenant understood the One Month Notice, the Landlord's agent C.B. stated that the Tenant was aware that it concerned ending the tenancy. The Landlords' agents stated that the Tenant had at one point informed the Landlord that he was moving out of the unit but failed to do so. Furthermore, the Landlord's agents had discussed and were providing resources to the Tenant to find alternate housing. The Landlord's agent C.B. stated that the Landlord does not accept tenants who have mental health issues or provide supportive housing for individuals with mental health issues, but that individual tenants may have mental issues and/or have mental health support.

I find that the Landlord has provided sufficient evidence that, on a balance of probabilities, the Tenant has engaged in conduct as specified in the One Month Notice to warrant an end to the tenancy.

Therefore, the Landlord's application is granted for an order of possession based upon the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act.

Conclusion

The Landlord's application is granted.

I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed 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: January 21, 2024

Residential Tenancy Branch