

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

I find that the Tenant (s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Issues to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

Both parties agree that a One Month Notice was given to the Tenant's agent on September 7, 2023. The reason given on the copy of the Notice provided by the Tenant's agent is that the tenant has assigned or sublet the rental unit without the landlord's written consent.

The Tenant's agent affirms the Tenant has been living and traveling overseas for the last 2-3 years and has not been staying in the rental unit.

The Landlord affirms the Tenant told them in July of 2021 that they were stuck overseas because of Covid. The Landlord further affirms that they have not had any communication with the Tenant since 2021.

The Tenant's agent affirms she does not pay rent to the Tenant, nor have a written sublease agreement. She affirms she does not live in the unit, but does come to the rental unit to clean, dust, water plants and pick up mail.

Although the Tenant's agent affirms not living in the rental unit, she does affirm staying overnight at the rental unit 4-5 nights a week and affirms having done so since the end of 2021.

Analysis

Should the landlord's One Month Notice be cancelled?

I find that the One Month Notice was duly served to the Tenant on September 7, 2023, and fits the form and content requirements of the Act.

Section 34 of the Act states unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

Policy Guideline 19 states under a sublease agreement, the original tenant vacates the rental unit and transfers their rights to a sub-tenant under a sublease agreement. The same Policy Guideline clarifies that the sub-tenant does not acquire the full rights

provided to tenants under the Act. The Act does not clarify what rights need to be transferred to the sub-tenant nor what rights need to be retained by the tenant to create a sublease agreement.

Section 1 of the Act states a tenancy agreement can be written or oral, express, or implied, and further states a sublease agreement is a type of tenancy agreement. I find that this implies a sublease agreement may also be written or oral, express, or implied.

As the Tenant has not lived in the rental unit since sometime in 2021, I find they have vacated the rental unit, a prerequisite of creating a sublet.

I find that the Tenant's agent, by maintaining the rental unit, and by staying in the rental unit 4-5 nights a week has assumed some of the rights of the Tenant.

I find that through the action, and inactions, of both parties, an implied sublease agreement has been created between the Tenant and the Tenant's agent. I further find that this sublease agreement was created without the consent of the Landlord.

For the above reasons, the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 of the Act is dismissed, without leave to reapply.

Is the landlord entitled to an Order of Possession?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

I find that the Notice complies with section 52 of the Act. Therefore, I find that the landlord is entitled to an Order of Possession.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was not successful in this application, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective at 1:00pm on January 31, 2024, after service of this Order on the tenant(s)**. Should the tenant(s) or anyone 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.

I grant the landlord a Monetary Order in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$100.00

The Landlord may retain \$100.00 from the tenant's security deposit as satisfaction of the Monetary Order.

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: January 10, 2024

Residential Tenancy Branch