



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENELOPE APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: CNE, OLC, FFT
 LL: OPC, MNDCL-S, LRSD, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on December 14, 2023 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a One Month Notice to End Tenancy dated December 11, 2023 (the “One Month Notice”);
- an order for the landlord to comply with the Act, tenancy agreement or regulations; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on February 1, 2024 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on two One Month Notices for Cause dated November 17, 2023 and December 11, 2023;
- a monetary order for damage, compensation, or loss;
- an order permitting the Landlord to retain the Tenant’s security deposit; and
- an order granting the recovery of the filing fee.

The hearing was scheduled for 11:00 AM on February 29, 2024 as a teleconference hearing. The Landlord’s Agents A.M. and Y.K. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 18 minutes before the call ended. 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 Landlord's Agents and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As no one attended the hearing for the Tenant, I dismiss the Tenant's application without leave to reapply.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Notices to End Tenancy. The Landlord's request for a monetary order, and to retain the Tenant's security deposit are dismissed with leave to reapply.

The Landlord's Agents were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based on the One Month Notices to End Tenancy, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agents made the following submissions; the tenancy began on July 1, 2018. Currently, the Tenant pays rent in the amount of \$1,152.00, which is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00. The Landlord is not certain if the Tenant continues to occupy the rental unit.

The Landlord's Agents testified that they served the Tenant with the One Month Notice dated November 17, 2023 with an effective vacancy date of December 31, 2023 by posting it to the Tenant's door on November 17, 2023. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord."

The Landlord's Agents stated that they received several noise complaints regarding the Tenant. The Landlord's Agents stated that they served several caution notices to the Tenant, however, the noise complaints continued. As the Tenant did comply with the caution notices, the Landlord's Agents served the One Month Notice dated November 17, 2023. The Landlord's Agents stated that the Tenant did not dispute this Notice.

The Landlord's Agents testified that they served the Tenant with the One Month Notice dated December 11, 2023 with an effective vacancy date of January 31, 2024 by posting it to the Tenant's door on December 11, 2023 and they also emailed the Tenant a copy of the Notice on the same date. The Landlord's reason for ending the tenancy on the One Month Notice is;

"The Tenant has assigned or sublet the rental unit without the Landlord's written consent."

The Landlord's Agents stated that they found out that the Tenant had sublet their rental unit to a subtenant without the Landlord's consent. As such, the Landlord is seeking an order of possession based on the December 11, 2023 One Month Notice as well.

While the Tenant applied to cancel the December 11, 2023 One Month Notice, no one attended the hearing for the Tenant to dispute the One Month Notice.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with the One Month Notice dated November 17, 2023 by posting it to the Tenant's door on November 17, 2023. Pursuant to Section 88 and 90 of the *Act*, the Tenant is deemed to have received the One Month Notice three days later, on November 20, 2023.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

I find that after being deemed served with the One Month Notice dated November 17, 2023 on November 20, 2023, the Tenant had until November 30, 2023 to dispute the One Month Notice. As the Tenant did not dispute the Notice, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy based on the One Month Notice dated November 17, 2023.

I find that the Tenant has only applied to dispute the One Month Notice dated December 11, 2023. As no one attended the hearing for the Tenant, their Application is dismissed without leave to reapply.

Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that both the One Month Notice dated November 17, 2023 and December 11, 2023 meet the requirements for form and content. I find that the Landlord has provided

sufficient evidence to demonstrate that they had sufficient cause to end the tenancy, combined with the fact that the Tenant is conclusively presumed to have accepted the end of the tenancy on both Notices.

As the effective date of the One Month Notices have passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order should be served onto the Tenant as soon as possible.

As the Landlord was successful with their Application, I find they are entitled to the recovery of the \$100.00 filing fee, which the Landlord can deduct from the Tenant's security deposit.

Conclusion

The Tenant did not appear at the time of the hearing; therefore, their Application is dismissed in its entirety without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. If the Tenant fails to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is permitted to deduct \$100.00 from the Tenant's security deposit for the return of the filing fee.

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: February 29, 2024

Residential Tenancy Branch