

DECISION

Introduction

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

- 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
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Landlord and the Landlord's interpreter attended the hearing for the Landlord.

The Tenant attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord testified that he served the Tenant with the Proceeding Package and Evidence (the Package) via registered mail on November 6, 2023. The Landlord entered into evidence a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. The Landlord entered into evidence photographs of the envelope used to mail the Package showing:

- the envelope's contents
- the envelope was addressed to the Tenant at the rental property
- the tracking number on the envelope is the same as the tracking number on the Canada Post Customer Receipt

The Landlord testified that the Tenant refused to accept the Package.

The Tenant testified that she did not receive the Package or a Canada Post pick up slip. The Tenant testified that she has a demanding work schedule and works one hour away from the rental property and her shifts are from 9am to 9pm. The Tenant testified that she does not always have time to pick up her mail.

The Landlord testified that he reserved the Tenant with the Proceeding Package and evidence on January 9, 2024 via registered mail. The Tenant testified that she received the January 9, 2024 mailing three weeks ago.

Based on the Landlord's testimony and the proof of service documents entered into evidence, I find that the Landlord served the Tenant with the Package on November 6, 2023 in accordance with section 89 of the Act. Section 90 of the Act states that a document given or served in accordance with section 89 of the Act, unless earlier received, is deemed to be received, if given or served by mail, on the fifth day after it is mailed. In accordance with section 90 of the Act, I find that the Tenant was deemed served with the Landlord's Package on November 22, 2023. I find that failing to check one's mail because of a busy work schedule does not override the deeming provision in section 90 of the Act.

Based on the testimony of both parties I find that the Landlord re-served the Proceeding Package and Evidence on the Tenant via registered mail on January 9, 2024. I find that the Tenant was deemed served with the above documents on January 14, 2024 in accordance with sections 89 and 90 of the Act.

Both parties agree that the Tenant served the Landlord with her evidence via registered mail. I find that the Tenant served the Landlord with her evidence in accordance with section 88 of the Act.

Preliminary Matters

The following issues were severed with leave to reapply:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act (\$4,500.00)
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act (\$1,000.00)

Residential Tenancy Branch Rules of Procedure, Rule 2.3, states that if, in the course of the dispute resolution proceeding the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss these issues identified in the application with leave to reapply. Leave to reapply is not an extension of any applicable time limit.

Issues to be Decided

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

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 1, 2023, with a monthly rent of \$2,400.00, due on first day of the month. Both parties agree that the Tenant has resided in the rental property since March of 2017.

The Landlord testified that he served the Tenant with the One Month Notice via registered mail on October 11, 2023. The Landlord entered into evidence a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. The Landlord entered into evidence photographs of the mailing envelope showing:

- the envelope was addressed to the Tenant at the rental property
- the tracking number on the envelope is the same as the tracking number on the Canada Post Customer Receipt

The Landlord testified that the Tenant refused to accept the Package.

The Tenant testified that she did not receive the One Month Notice. The Tenant testified that she has a demanding work schedule and works one hour away from the rental property and her shift is from 9am to 9pm. The Tenant testified that she does not always have time to pick up her mail.

The Tenant has not filed an Application for Dispute Resolution with the Residential Tenancy Branch to dispute the One Month Notice.

The One Month Notice was entered into evidence, is signed by the landlord, is dated October 11, 2023, gives the address of the rental unit, states that the effective date of the notice is November 30, 2023, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Analysis

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

Upon review of the One Month Notice I find that it meets the form and content requirements of section 52 of the Act.

Based on the Landlord's testimony and the proof of service documents entered into evidence, I find that the Landlord served the Tenant with the One Month Notice on October 11, 2023 in accordance with section 88 of the Act. Section 90 of the Act states that a document given or served in accordance with section 88 of the Act, unless earlier received, is deemed to be received, if given or served by mail, on the fifth day after it is mailed. In accordance with section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on October 16, 2023. I find that failing to check one's mail because of a busy work schedule does not override the deeming provision in section 90 of the Act.

Section 47 of the Act states that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so under the Act.

Section 47(4) and (5) of the Act states that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 days after the date the tenant receives or is deemed to have received the notice, 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenant did not make an application under section 47(4) of the Act within 10 days of being deemed to have received the One Month Notice. In accordance with section 47(5) of the Act, due to the failure of the Tenant to take this action within 10 days, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on November 30, 2023, the effective date on the One Month Notice.

As the effective date of the One Month Notice has passed, I find that the Landlord is entitled to an Order of Possession based on the One Month Notice under sections 47 and 55 of the Act.

Given the long duration of the tenancy I find that a two-day Order of Possession would be unreasonable. I grant the Landlord an Order of Possession effective at 1:00 pm on March 31, 2024.

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 by 1:00 PM on March 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 is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: February 1, 2024

Residential Tenancy Branch