

## **DECISION**

### **Introduction**

This hearing dealt with an application filed by both the Tenant and the Landlord pursuant to the Residential Tenancy Act (the “Act”):

The Tenant applied 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 for the Landlord to provide services or facilities required by law under section 27 of the Act

The Landlord applied for:

- an Order of Possession based on a One Month Notice under section 55 of the Act;
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72 of the Act

SM and NT attended the hearing as agents for the Landlord.

No one attended the hearing on behalf of the Tenant.

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package)**

The Landlord's agents confirmed receipt of the Tenant's Proceeding Package.

The Landlord's agents testified that they served the Tenant with their Proceeding Package and evidence. In support of this, they submitted a Proof of Service document containing the Tenant's signature.

Based on the foregoing, I find that the parties were served with each other's application materials in accordance with section 89 of the Act.

## **Preliminary Matter**

Residential Tenancy Branch Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In accordance with the above, the hearing proceeded in the Tenant's absence. I order the Tenant's application is dismissed without leave to reapply.

## **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 September 1, 2018. Monthly rent is \$375.00, due on the first day of the month. The Landlord collected a security deposit in the amount of \$446.50.00. A copy of the Tenancy Agreement is submitted into evidence.

The Landlord's agents testified that they served the Tenant with the One Month Notice in person on January 8, 2024. In support of this, the Landlord submitted a copy of Proof of a Service document containing the signature of a witness to this service.

The One Month Notice is submitted into evidence. The reasons for the One Month Notice are listed as:

Tenant or person permitted on the property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.

In the Details of Cause section of the One Month Notice, the Landlord states:

September 5, 2023 at 7:30am – tenant was observed trying to ignite a fire in the garden – see letter sent dated September 7, 2023

December 8, 2023 at 6:18am – tenant was seen walking through hallways and banging on the doors of other units – see letter sent dated December 8, 2023

December 28, 2023 at 1:55 am – tenant broke the lock of another unit (205); VPD file number Va-**REDACTED**

[reproduced as written with redaction as noted]

The Landlord's agents testified that the facts stated in the details section of the One Month Notice are true. They noted that the three videos and photo submitted into evidence show the Tenant's involvement in each incident. They noted that after the incident on September 5, 2023, and December 8, 2023, the Tenant was sent warning letters on September 7, 2023, and December 8, 2023, respectively. The letters are submitted into evidence.

The Landlord's agents testified that they fear for the safety of the other residents in the building based on the escalation of the Tenant's behaviour.

The Landlord is seeking an Order of Possession.

## **Analysis**

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

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.

Based on the undisputed testimony and evidence of the Landlord, I find on a balance of probabilities the Tenant or person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord and put the landlord's property at significant risk. As a result, I find the Landlord has met the onus which is upon them to prove the grounds for the One Month Notice.

The One Month Notice meets the form and content requirements of section 52 of the Act.

Considering the above, I find that the Landlord is entitled to an Order of Possession under section 47 and 55 of the Act. Given the Landlord's concern for the safety of the other residents of the building, I find it necessary to issue the Order of Possession effective two days after service of the order upon the Tenant.

**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 they are entitled to recover the filing fee for this application from the Tenant. The Landlord continues to hold the Tenant's security deposit in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$100.00 from the Tenant's security deposit.

**Conclusion**

The Tenant's application is dismissed in its entirety without leave to reapply.

The Landlord is granted an order of possession which is effective two days after service upon the Tenant. The Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord may retain \$100.00 from the Tenant's security deposit.

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 27, 2024

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Residential Tenancy Branch