

## **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 to suspend or set conditions on the Landlord's right to enter the rental unit under section 70(1) of the Act
- authorization to change the locks to the rental unit under section 70(2) of the Act

And the Landlord's cross-application under the Act, for an Order of Possession based on the One Month Notice issued February 13, 2024.

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

I find the Landlord served notice of their cross-application to the door of the Tenant's rental unit on March 6, 2024, with a witness, in accordance with section 89(1) of the Act.

The Landlord provided a copy of a signed and witnessed proof of service form to confirm this service.

### **Preliminary Matters**

The Tenant did not attend at the appointed time set for the hearing, although I waited until 11:25 AM to enable them to participate in this hearing scheduled for 11:00 AM.

I confirmed that the correct call-in number and participant code had been provided in the Tenant's own Notice of Dispute Resolution Proceeding.

I also confirmed on the teleconference system that the Landlord and the Arbitrator were the only persons who called into this hearing.

Under Rule of Procedure 7.3, I conducted the hearing in the absence of the Tenant.

Under Rule 7.4, I considered the Tenant's evidence and submissions.

## **Issues to be Decided**

Does the One Month Notice end the tenancy?

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to an order authorizing them to change the locks for the rental unit?

## **Facts and Analysis**

The Landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the Landlord on October 10, 2023, and by the Tenant on October 4, 2023. Although the tenancy agreement does not name the Tenant on the first page, I find the Tenant is a co-tenant based on their signature and agreement to the terms of the tenancy.
  - The tenancy agreement says the rent is due on the 4<sup>th</sup> of each month and the addendum says the rent will be paid to the Landlord by the "head tenant".
- A copy of the signed "agreement between housemates" says the Tenant will pay their portion of rent, \$1,087.50, to the "head tenant" by the 4<sup>th</sup> of each month.
- A copy of a One Month Notice, issued February 13, 2024, requiring the Tenant to vacate by March 15, 2024, for repeated late rent payments, unreasonable disturbance of other occupants, and seriously jeopardizing the health or safety of other occupants.
  - I find the One Month Notice complies with the form and content requirements of section 52 of the Act.
- A copy of a signed Proof of Service form which indicates the One Month Notice was posted to the Tenant's door at 3:35 pm on February 13, 2024.
  - Although the Proof of Service form was not signed by a witness, I find the Tenant acknowledged receiving the One Month Notice on their door in their dispute application.
- A copy of e-transfer receipts showing the Tenant paid rent late to the "head tenant" in January 2024. I find the Tenant paid rent in three installments on January 12 and 16, 2024.

- A copy of two e-transfer receipts showing the Tenant paid rent directly to the Landlord on March 19, 2024, and April 7, 2024. The Landlord says these were only partial payments and there is still rent owing.
- A copy of text messages from another occupant saying the Tenant slams the door and uses their cell phone very loudly on speaker phone.
- A copy of a witness statement from the “head tenant” saying the Tenant did not pay rent or a deposit for October 2023, the Tenant smokes indoors, and knocks on doors disturbing other occupants’ sleep.

The Landlord testified the Tenant paid rent late on May 5, 2024.

The Landlord testified that they have received many complaints from the other occupants that the Tenant is disturbing them and making threatening behavior towards them.

The Tenant submitted a copy of their e-transfer receipt for February 2024’s rent payment, dated February 5, 2024.

### **Does the One Month Notice end the tenancy?**

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.

According to Residential Tenancy Policy Guideline 38 on repeated late payment of rent, three late payments are the minimum number sufficient to justify a notice under these provisions.

I find the tenancy agreement indicates rent is due on the 4<sup>th</sup> of each month.

I accept the Landlord’s undisputed testimony and evidence that the Tenant paid rent late in January, February, March, April and May 2024, and the Tenant did not pay rent or a deposit for October 2023.

I find the Tenant paid rent late on three occasions, October 2023, January 2024, and February 2024, prior to when the One Month Notice was issued on February 13, 2024. After the One Month Notice was issued, I find the Tenant continued to pay rent late for the next three months.

I find the Landlord has established sufficient cause to end the tenancy for repeated late payment of rent.

I accept the Landlord's testimony and evidence that the Tenant has unreasonably disturbed the other occupants of the rental unit by smoking, arguing, threatening other occupants, and making loud noises outside of reasonable hours.

I find the Landlord has established sufficient cause to end the tenancy for unreasonable disturbance.

Therefore, I find that the Landlord is entitled to an Order of Possession based on the One Month Notice issued February 13, 2024, under sections 47 and 55 of the Act.

Under Policy Guideline 54, I extend the effective date of the Order of Possession to May 31, 2024, because I find the Tenant has paid rent for May 2024.

Although the tenancy agreement indicates that rent would be paid to the Landlord by one "head tenant," I find that the agreement and addendum were signed by the occupants of all the other rooms. So, despite the structure of how rent was to be paid under the tenancy agreement, I find the Tenants listed on the addendum are co-tenants.

Policy Guideline 13, regarding co-tenants, says when a tenancy ends for one co-tenant, it applies to all co-tenants.

*Co-tenants wishing to remain in the rental unit after a notice to end the tenancy has been given should discuss the situation with the landlord. If the landlord agrees to the tenant staying, the landlord and tenant must enter into a new written tenancy agreement.*

*If a tenant remains in the rental unit and continue paying rent after the date the notice took effect, the landlord and tenant may have implicitly entered into a new tenancy agreement.*

**Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?**

As the tenancy is ended, I find it is not necessary to make an order.

**Is the Tenant entitled to an order authorizing them to change the locks for the rental unit?**

As the tenancy is ended, I find it is not necessary to make an order.

## Conclusion

I dismiss the Tenant's application in its entirety without leave to reapply.

I grant an Order of Possession to the Landlord **effective on May 31, 2024, at 1:00 pm, after service of this Order on the Tenant**. Should the Tenant 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.

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: May 13, 2024

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Residential Tenancy Branch