

DECISION

Introduction

This hearing dealt with Applications for Dispute Resolution from both the Landlord and the Tenant under the *Residential Tenancy Act* (the "Act").

The Landlord's Application for Dispute Resolution, filed on March 1, 2024, is for:

- an order to end the tenancy for cause pursuant to sections 47 and 55
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant's Application for Dispute Resolution, filed on March 4, 2024, is for:

- An order to cancel a One Month Notice to End Tenancy for Cause, (the "One Month Notice") pursuant to sections 47 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66;

A.G., and M.S. attended the hearing for the Landlord, C.I.P.L.

Tenant A.E.P., attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

I find that the Landlord acknowledged service of the Proceeding Package and is duly served in accordance with the Act.

Service of Evidence

The Tenant acknowledged service of the Landlord's evidence and I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Landlord acknowledged service of the Tenant's evidence and I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

During the hearing the Tenant requested that she be allowed to provide more evidence to the Landlord and I, either during the hearing or afterwards. I denied this request as the time for evidence to be served had already passed, and the Landlord would not have the ability to consider the evidence and respond to it. Procedural fairness necessitates that the parties receive evidence in advance to be able to respond accordingly.

Issues to be Decided

Is the tenant entitled to more time to cancel the landlord's One Month Notice?

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

Background and Evidence

This tenancy began on December 15, 2021. The monthly rent is \$1,982.00, due on the first day of the month. The Landlord holds a \$957.50 security deposit and a \$957.50 pet deposit in trust for the Tenant. The rental unit is an apartment in an apartment building with multiple other apartments.

The Landlord testified and provided evidence that they have issued 9 cautionary notices to the Tenant from November 2023 to March 2024. The cautionary notices are summarized as follows:

- 1) November 16, 2023 - the Tenant flipped the door locks to hold the doors open leaving the building unsecure and open to the general public.
- 2) Dec 6, 2023 - the Tenant had loud noises and excessive music playing on December 5 and December 6.
- 3) December 10, 2023 – the Tenant had loud construction noises disrupting residents on floors 1 and 2.
- 4) December 15 – a guest of the Tenant’s was in the hallway outside the rental unit, yelling at the Tenant and using foul language.
- 5) January 8, 2023- the Tenant was playing loud music disturbing other residents.
- 6) January 14, 2024 – a guest was trespassing though patios and got aggressive and uttered threats in front of children.
- 7) January 17, 2024, the Tenant continuously lets her dog roam the hallways, and on January 17, 2024, it got into another resident’s unit and bit them.
- 8) February 7, 2024, a guest of the Tenant’s was walking through patios and destroyed another resident’s personal property. On February 8, 2024 some residents of the building called the police because of the behaviour of her guest.
- 9) March 1, 2024 – the Tenant was playing loud music disturbing other residents.

The Landlord testified that the cautionary notices were intended to warn the Tenant that her behaviour was unacceptable and must change. The Tenant did not respond to any of the cautionary notices, except on March 1, 2024.

The Tenant testified that she received the notices, but she believed they were just sharing a story with her. The Tenant did not believe that she needed to reply to the notices. The Tenant agreed that she did make noise sometimes, but that she expected that her neighbours would text her to be quiet as they had done in the past. I find that the Tenant's noise unreasonably disturbed her neighbours. The Tenant should have changed her behaviour after receiving the cautionary notices.

The Landlord served the One Month Notice to the Tenant on January 26, 2023, by attaching it to the Tenant's door. I have reviewed the One Month Notice and it conforms to section 52. The effective date of the One Month Notice was February 9, 2024.

The One Month Notice stated the reasons for ending the tenancy were that the Tenant 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, and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Tenant did not move out on the effective date of the notice, and still resides at the rental unit.

The Tenant filed for dispute resolution on February 29, 2024, asking for an extension for time to cancel the Landlord's One Month Notice, stating "not only have I been distraught from the offence, stressed requesting my last partner leave me in peace, confused with landlords - fictional stories." The Tenant provided evidence that showed that she was a victim of a crime which happened between August and October 2022. The Tenant testified that she was distraught and confused about this proceeding because she knew that she did nothing wrong. The Tenant also stated that she might not have made her application in time because she did not have the money to do so.

Analysis

Is the tenant entitled to more time to cancel the landlord's One Month Notice?

The Landlord served the One Month Notice to the Tenant on January 26, 2023, by attaching it to the Tenant's door. Under section 90 of the Act, the Landlord is deemed to have served the Tenant on January 29, 2024, three days after being posted on the Tenant's door.

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. As the tenant disputed this notice on February 29, 2024, and since I have found that the One Month Notice is deemed to have been served to the tenant on January 29, 2024, I find the tenant had until February 8, 2024 to dispute the One Month Notice.

The tenant has applied for dispute resolution requesting more time to cancel a notice to end tenancy. Section 66 of the Act states that the director may extend a time limit established by the Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end tenancy beyond the effective date of the notice. As the Tenant made their application on the same day as the effective date of the notice, any extension would extend the time limit beyond the effective date of the notice.

Additionally, though the Tenant provided evidence that she was a victim of crime which happened between August and October 2022, she did not explain how this impacted their ability to respond. While I am sympathetic to her circumstances, the Tenant did not provide details to show that there were exceptional circumstances. The Tenant did not show that she had a bone fide intent to comply with the time limit, nor that her failure to meet the time limit was not caused by her own conduct.

For these reasons, the Tenant is not entitled to more time to cancel the Landlord's One Month Notice.

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.

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.

As stated above, I find that the Landlord is deemed to have served the Tenant with the One Month Notice on January 29, 2024. 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. As her application to extend the time limit is dismissed, 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 February 29, 2024, 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 May 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. The Landlord will withhold \$100.00 from the Tenant's security deposit in satisfaction of this payment due under section 72(2)(b).

Conclusion

I grant an Order of Possession to the Landlord **effective May 30, 2024, 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.

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: May 1, 2024

Residential Tenancy Branch