

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) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act

This hearing also dealt with the Landlord's Cross 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
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

Preliminary Matters

1. Attendance

The Landlord called into this teleconference at the date and time set for the hearing of this matter. The Tenant did not attend the hearing at any time even though I left the conference call open to allow any person with the call in details to attend for the approximately 39-minute hearing.

I confirmed that the correct call-in numbers and participant codes had been provided in both the Notices of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

The Landlord testified they were ready to proceed. Given one of the applications was the Tenant's application and they did not attend the hearing at the scheduled time, I exercise my discretion under Rule 7.3 to conduct the hearing in the absence of the Tenant.

2. Request to Amend Application

At the hearing, the Landlord requested to withdraw the following issues:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 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

Under section 64(3)(c) of the Act, I permit the Landlord to amend their cross application to remove the abovementioned issues.

Service of Notice of Dispute Resolution Proceeding and Evidence of the Tenant's Application

Rule 3.5 of the Rules of Procedure state that the applicant, in this case the Tenant, must be prepared to demonstrate to the satisfaction of the director that each respondent was served with Notice of Dispute Resolution Proceeding and all other associated documents. If applicant fails to demonstrate, director may adjourn, dismiss with or without leave.

Without submissions from the Tenant to prove service, the absence of any uploaded documentary evidence to prove service, and the Landlord's testimony that they did not receive the Notice of Dispute Resolution Proceeding or Evidence for the Tenant's application, I find that the Tenant did not serve their Notice of Dispute Resolution Proceeding and Evidence in compliance with section 88 and section 89 of the Act.

Accordingly, I exercise my discretion under Rule 3.5 to dismiss the Tenant's application, without leave to reapply.

Service of Notice of Dispute Resolution Proceeding and Evidence of the Landlord's Cross Application

Based on the Landlord's testimony, and on a balance of probabilities, I find that the Landlord served the Cross Application's Notice of Dispute Resolution Proceeding and Evidence to the Tenant on July 4, 2024, by posting it on the door of the rental unit, in compliance with section 88 and 89 of the Act. Under section 90 of the Act, I deem that the Cross Application Notice of Dispute Resolution Proceeding and Evidence was received by the Tenant on July 7, 2024, the third day after being posted to the door of the rental unit.

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?

Background and Evidence

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

The Landlord testified that this tenancy began on approximately August 27, 2022, with monthly rent in the amount of \$900.00 due on the first day of every month. The Landlord stated that they collected and continue to hold in trust a \$100.00 security deposit. The Landlord declared that the tenancy is ongoing. The Landlord affirmed that the rental unit is a basement suite and that the Landlord, and the Tenant do not share kitchen or washroom facilities.

The Landlord testified that they served the Tenant with all pages of the One Month Notice on May 31, 2024, by posting it to the door of the rental unit.

A completed copy of the One Month Notice was submitted, the effective date of the One Month Notice is June 30, 2024. The One Month Notice is dated May 30, 2024. The reasons cited on the One Month Notice are listed below:

- The Tenant has allowed an unreasonable number of occupants in the property
- The Tenant is repeatedly late paying rent
- The Tenant or a 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 the Landlord
 - put the Landlord's property at significant risk

- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to damage the Landlord's property
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the Landlord
- The Tenant has not done required repairs of damage to the rental unit and property
- The Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Landlord testified that the Tenant sells illegal drugs and contraband cigarettes from the property. The Landlord stated that these activities began as soon as the Tenant moved in and have continued to the time of this hearing. The Landlord affirmed that there are often unknown people visiting the property to request for illegal drugs and cigarettes. The Landlord testified that the backdoor, washroom door, and window screens at the rental unit have been destroyed by the Tenant or the Tenant's guests. The Landlord stated that the police have visited the property at least ten times since the beginning of the tenancy.

The Landlord submitted a three-page handwritten timeline of events to support their version of events. Select passages from the Landlord's evidence read:

- "December-21-2023- R.C.M.P and ambulance at basement suite for drug overdose."
- "Mid July-2023- R.C.M.P and ambulance and fire rescue to basement suite for drug overdose."

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.

Section 47(4) of the Act provides a tenant the right to dispute a notice served under this section 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 under this section does not make an application for dispute resolution, the tenant is (a) conclusively presumed to have accepted the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Section 76 of the Act states that the arbitrator may admit as evidence, whether or not it would be admissible under the laws of evidence, any record or thing that the arbitrator considers to be (a) necessary and appropriate, and (b) relevant to the dispute resolution proceeding.

In this case, I accept the Landlord's testimony that they served a copy of the One Month Notice to the Tenant on May 31, 2024, by posting it to the door of the Tenant's rental unit.

Under section 90 of the Act, I find that the Tenant is deemed to have received the One Month Notice on May 31, 2024. I base this finding on the fact that the Tenant own application indicates that they received the One Month Notice on May 31, 2024, and that the method of delivery was by posting it the door of the rental unit. I further find that the Tenant had to file their application to dispute the One Month Notice within ten days of May 31, 2024.

Rule 2.6 states that an application is considered to have been made when either the application fee has been paid or when the fee waiver application has been submitted to the Residential Tenancy Branch or a Service BC Office.

According to the Dispute Management System the payment fee for the Tenant's application was received on June 12, 2024. Based on the above, I find that the deadline for the Tenant to file their application was June 10, 2024.

I find the Landlord served the One Month Notice on May 31, 2024, and I deem the Tenant received the One Month Notice on the same day May 31, 2024. On review of the applications filing dates, I find that the Tenant filed their application to dispute the One Month Notice on June 12, 2024, which is not within the required time as permitted under the Act.

Notices served under section 47 of the Act must comply with section 52 of the Act for form and content. I have examined the One Month Notice and I find that it complies with section 52 of the Act. I find that the One Month Notice is signed and dated by the Landlord, provides the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy, and is in the standard RTB-33 form.

While the Act does permit an arbitrator to extend timelines and consider late applications to dispute notices to end a tenancy, I find that that is not applicable here given the Tenant has not attended their own application to provide submissions on why they did not make their application with the required timeline. Consequently, I decline to exercise my authority to extend the timeline here.

Based on the above, the Landlord's undisputed testimony, and on a balance of probabilities, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the One Month Notice under section 47(5) of the Act.

I uphold the Landlord's One Month Notice dated May 30, 2024.

I dismiss the Tenant's request to cancel the One Month Notice, without leave to reapply.

I find the Landlord is entitled to an Order of Possession effective seven days after service of the Order.

Conclusion

The Tenant's application to cancel the One Month Notice is dismissed, without leave to reapply. The Landlord's One Month Notice is upheld.

The Landlord's application for an Order of Possession based on the One Month Notice is granted.

The Landlord is granted an Order of Possession effective seven days after service of the Order. 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.

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: August 1, 2024

Residential Tenancy Branch