

## **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
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order for the Landlord to provide services or facilities required by law under section 27 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

This hearing 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 under sections 47 and 55 of the Act

Tenant J.S.L., Tenant D.D. attended the initial hearing and the continuation hearing for the Tenants.

Landlord D.A. attended the initial hearing and the continuation hearing for the Landlord.

Landlord's Daughter and Agent A.D. attended the continuation hearing for the Landlord.

At the initial hearing, the parties agreed to adjourn to address several issues with service of the applications. An Interim Decision, dated September 27, 2024, was released which provided the parties with instructions to serve prior to the continuation hearing. The Interim Decision is to be read together with this Decision.

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

After the service issues were identified in the initial hearing, the parties were ordered by the Interim Decision dated September 27, 2024, to serve their Notice of Dispute Resolution Proceeding and evidence to each other by email.

At the continuation hearing, the Tenants testified that they were unable to send their Notice of Dispute Resolution Proceeding to the Landlord due to incapability, inexperience, and email size restrictions.

Residential Tenancy Branch Rules of Procedure Rule 3.1 states that the applicant must serve each respondent with the Notice of Dispute Resolution Proceeding, Respondent instructions, fact sheets provided by Residential Tenancy Branch, and applicant's evidence.

Rule 3.5 states that applicant 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.

Based on the above, I find that the Tenants did not comply with the Act and the Rules of Procedure by serving their Notice of Dispute Resolution and evidence to the Landlord. Consequently, I dismiss the Tenant's entire application, with leave to reapply.

### **Service of the Landlord's Notice of Dispute Resolution Proceeding and Evidence**

The Landlord testified that they served their Notice of Dispute Resolution Proceeding and evidence to the Tenants by email on September 30, 2024. The Landlord confirmed and recited the evidence attachments and file formats that were sent to the Tenants.

I find that the Landlord complied with section 88 and 89 of the Act, and I find that the Tenants are deemed to have received the Landlord's Notice of Dispute Resolution Proceeding and evidence on October 3, 2024, the third day after the email was sent.

### **Issues to be Decided**

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

### **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.

The parties agreed that this tenancy began on February 1, 2019, with a monthly rent of \$1,200.00, due on the first day of each month. The parties agreed that the tenancy is ongoing, and that the Landlord continues to hold the Tenant's \$600.00 security deposit. The parties agreed the rental unit is a basement suite.

The Landlord submitted a signed copy of the One Month Notice dated July 4, 2024, with an effective date of August 15, 2024. The reasons cited on the One Month Notice are listed below:

- *The Tenant has allowed an unreasonable number of occupants in the unit/site*
- *The Tenant or a person permitted on the property by the Tenant has*
  - *Significant 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*
- *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 has assigned or sublet the rental unit/site without Landlord's written consent*

The Tenants testified that they received the One Month Notice on July 5, 2024, when an agent of the Landlord personally delivered the Notice to the Tenants.

When questioned what prevented the Tenants from disputing the One Month Notice within the required timeline, specifically within ten days of receiving the Notice, the Tenants testified that they did not believe the Landlord would follow through with the Notice because no other issues were brought up.

### **Unreasonable Number of Occupants**

The Landlord testified that there are two extra occupants at the rental unit and that one of the extra occupants stayed there for approximately six to seven months around April of 2024. The Landlord stated that there are several visitors to the rental unit in the evening, and that the Tenant frequently invites people to stay in backyard of the property.

The Tenants testified that they have had guests stay overnight, but not for months.

### **Significant Interference, Unreasonable Disturbance, Jeopardized Health or Safety or Lawful Right, and Significant Risk**

The Landlord testified that the rental property receives a significant number of frequent visitors and that the visitors often litter at the rental property. The Landlord stated that on July 1, 2024, the Tenants had accumulated a large amount of litter and trash at the house. The Landlord submitted a letter dated June 13, 2024, where the Landlord communicated the issue of the excessive debris around the rental property and cited potential hazard, and fire risks. In the same letter, the Landlord communicated that

The Tenants testified that they do not believe there is a significant risk to the rental property. The Tenants declared that they are not bringing litter to the rental property. The Tenants stated that the accumulated items in the backyard of the rental property was the Tenant's gardening equipment which they used throughout the tenancy to perform the yardwork at the rental property. The Tenants affirmed that they have removed their belongings from the rental property's backyard by August 1, 2024.

### **Breach of a Material Term**

The Landlord testified that the Tenant's choice of permitting overnight visitors and the Tenant's habit of accumulating debris at the rental unit is a breach of a material term of the tenancy agreement. The Landlord again referred to the letter dated June 13, 2024, and stated that they gave the Tenants a chance to correct the problem before July 1, 2024, but the Tenant failed to comply which prompted the Landlord to serve the One Month Notice.

### **Illegal Sublet**

The Landlord testified that there are occupants not including the Tenants living in the rental unit, and that they are long time guests. The Landlord stated that they do not know if the Tenant receives rent from these occupants.

The Tenants declared that they have not sublet the rental unit and that they do not collect rent from anybody.

### **Analysis**

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 states that a tenant may dispute a notice served under this section of the Act by making an application for dispute resolution 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 in accordance with section 47(4) of the Act, the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and (b) must vacate the rental unit by that date.

As the Tenant disputed this notice on September 3, 2024, and the One Month Notice was received by the Tenant on July 5, 2024, I find that the Tenant has failed to dispute the One Month Notice within the time frame allowed by section 47 of the Act.

Consequently, I find that conclusive presumption applies under section 47(5) of 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 because it is signed and dated by the Landlord, it states the address of the rental unit, it states the effective date of the Notice, it states the grounds for ending the tenancy, and it is in the approved form. I will note that while the One Month Notice used is an old form, I find that the use of the old form in this case does not automatically invalidate the One Month Notice given that it contains the required information and was not intended to mislead. See Residential Tenancy Branch Policy Guideline #18.

I uphold the Landlord's One Month Notice.

I grant the Landlord's request for an Order of Possession.

Section 68(2)(a) of the Act states that the director may order that a tenancy ends on a date other than the effective date shown on the notice to end tenancy.

Based on the length of the tenancy, the timing of the hearing dates, and under section 68(2)(a) of the Act, I find that the Landlord is entitled to an Order of Possession effective January 31, 2025.

## Conclusion

The Landlord's application is granted.

I grant an Order of Possession to the Landlord **effective on January 31, 2025, 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.

The Tenant's entire application is dismissed, with leave to reapply.

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: November 12, 2024