

DECISION

Introduction

This hearing dealt with the Landlord's 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 End of Employment (One Month Notice) under sections 48 and 55 of the Act
- Authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also 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
- Cancellation of the Landlord's One Month Notice to End Tenancy for End of Employment (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 48 and 66 of the Act
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord, the landlord's spouse B.R and the Landlord's Counsel J.S. (The Landlord's Counsel) attended the hearing for the Landlord.

The Tenant and the Tenant's witness G.D. attended the hearing for the Tenant.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Tenant was served on October 6, 2024, in person, in accordance with section 89(1) of the Act. Proof of service form was provided.

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

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

The Tenant advised they emailed the evidence on the date of the hearing to the Landlord's partner. The Rules of Procedure outline the time limits for evidence to be provided to the other side. For an applicant it is 14 days before the hearing (Rule of Procedure 3.14) and 7 days before the hearing for the respondent (Rule of Procedure 3.15). I find that the Tenant did not provide their evidence within either of those deadlines.

If a party does not comply with the timelines included in the Rule of Procedures, that party risks the evidence not being considered. I must consider whether the acceptance of the late evidence would prejudice either party or result in a breach of the principals of natural justice and the right to a fair hearing. Given how late the evidence was provided and that it was not sent to the Landlord but the Landlord's partner, I determined that if I were to accept the Tenant's late evidence, the Landlord would be denied the opportunity to prepare for and submit their rebuttal to the evidence. I find the prejudice to the Landlord is greater than the prejudice to the Tenant. Based on the above, I exclude the Tenant's evidence.

Preliminary Matters

- Partial Withdraw

The Tenant applied to dispute a One Month Notice for Cause but advised during the hearing that they were never served a One Month Notice for Cause, and it was applied for by mistake. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended, and this issue is withdrawn.

- Amend Application

Amended address for rental unit listed on the applications to add the identifier "Coach House".

Issues to be Decided

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice for End of Employment?

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

Is the Tenant or the Landlord entitled to recover the filing fee for this application from the other party?

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 evidence provided showed that the Tenant began living in the rental unit as a guest around May 2024, then the parties entered into an oral tenancy agreement, around June 10, 2024, that the Tenant would be permitted to stay in the rental unit in consideration for the Tenant looking after the property and the Landlord's pets. The Tenant was not required to pay rent, utilities or a security deposit. The parties confirmed the Tenant was acting as a caretaker of the property in exchange for living in the rental unit.

The Landlord served a One Month Notice for End of Employment on August 29, 2024, in person and selected Tenant's rental unit is part of the tenant's employment as a caretaker of the property, the tenant's employment has ended, and the landlord intends to rent or provide the rental unit to a new caretaker (the One Month Notice). The Tenant confirmed they received the One Month Notice on August 29, 2024 and the Tenant disputed the One Month Notice on October 1, 2024. The effective date on the One Month Notice was September 30, 2024.

The Tenant applied to dispute the One Month Notice and for more time to dispute the One Month Notice. The Landlord applied for an Order of Possession based on the One Month Notice.

The Landlord's position is that the Tenant began their employment as the caretaker around June 8, 2024 and on August 21, 2024 the Landlord had a conversation with the Tenant and ended the Tenant's employment as a caretaker. The Landlord's Counsel argued the Landlord needs to hire a new caretaker because the Landlord is undergoing surgery soon and needs a caretaker to oversee the property during the Landlord's recovery. The Landlord provided copies of emails and an ad listed in the local paper, to support the Landlord has made efforts to find a new caretaker.

The Tenant argued they were late disputing the One Month Notice because they were not originally going to dispute, but after the Tenant spoke with some family and friends the Tenant decided to dispute.

The Tenant's position is that the Landlord did not provide written notice of the termination, a reason for the termination or 2 weeks of notice. The Tenant advised on August 21, 2024, they were told the situation had changed and the Landlord was finding someone new to be the caretaker.

Analysis

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

Is the Tenant entitled to more time to cancel the Landlord's One Month Notice?

Section 47 of the Act states that a landlord may issue a Notice to End Tenancy for End of Employment 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.

The parties confirmed the One Month Notice was served in-person on August 29, 2024.; Tenant disputed the One Month Notice on October 1, 2024. The Tenant did not apply within the 10 day deadline.

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.

The effective date on the One Month Notice was September 30, 2024 and the Tenant made their application for dispute resolution for more time on October 1, 2024, which is after the effective date of the One Month Notice. Even if the Tenant could establish grounds that meet the requirements of exceptional circumstances, I cannot grant an extension of time once the effective date of the One Month Notice has passed. Furthermore, even if the Tenant did not dispute after the effective date on the One Month Notice, I find that the Tenant has provided no argument that would qualify as an exceptional circumstance.

Based on the above, the Tenant is conclusively presumed to have accepted the end of the tenancy under section 47(5) of the Act.

For the above reasons, the Tenant's application for cancellation of One Month Notice and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act is dismissed, without leave to reapply.

Based on the evidence and submissions of both parties, I find that the Landlord issued the One Month Notice for the valid reason of end of employment with the Landlord. Based on the testimony of both parties, I find that the rental unit was provided to the Tenant for the term of the Tenant's employment as a caretaker. Additionally, I find that the employment ended on August 21, 2024, and based on the email and add, I find the Landlord intends in good faith to provide the rental unit to a new caretaker.

The Tenant argued they were not provided with written termination, with 2 weeks of notice or with reasons for the termination; however, I find that those are an employment issue and are not a consideration under the Act when a One Month Notice for End of Employment is given.

Is the Landlord entitled to an Order of Possession based on a Notice to End Tenancy?

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act. I find that the One Month Notice complies with section 52 of the Act.

I grant an Order of Possession **effective seven (7) days after service of this Order on the Tenant.**

Is the Landlord or the Tenant entitled to recover the filing fee for their application?

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. As the Tenant was not successful I decline to award the Tenant recovery of the filing fee.

Conclusion

I grant an Order of Possession to the Landlord **effective seven (7) days 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.

I grant the Landlord a Monetary Order in the amount of **\$100.00** for the recovery of the filing fee.

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 and enforced in the Small Claims Court of British Columbia if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

The entirety of the Tenant's application is dismissed without 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 1, 2024

Residential Tenancy Branch