



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes (T) CNC, RP
 (L) OPC

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 requiring the Landlord to make repairs under section 32 of the Act

and, with the Landlord's Application for Dispute Resolution under 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

The Landlord was represented by property manager C.S. at the hearing.

The Tenant attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord provided a completed proof of service form to confirm service to the Tenant on January 9, 2024 by posting on the rental unit door the Notice of Hearing on the Landlord's application. The Landlord further submitted a completed proof of service form dated January 13, 2024, to confirm service to the Tenant by posting to the rental unit door copies of the Landlord's evidence. The Tenant confirmed she received a copy of the Notice of Hearing and Landlord's evidence. I find the Tenant was served with the proceeding package on January 9 and January 13, 2024.

The Tenant submitted no evidence in support of her application. Additionally, the Tenant did not provide documentary evidence to support her claim of service of her

dispute resolution package to the Landlord. The Tenant stated she “believed” she mailed the Notice of Hearing to the Landlord and further stated it may have been by Canada Post registered mail. However, she was unable to provide the Canada Post tracking number issued for the package, nor the date she sent the package. The Landlord’s representative stated she was unaware of the Notice of Hearing on the Tenant’s application although it may have been delivered to the Landlord’s office. I find the Tenant has failed to properly serve the Landlord with the proceeding package on her application as required under the Act. This serves as an adequate and independent basis upon which to dismiss the Tenant’s application pursuant to section 89(1) of the Act.

Issues for Decision

Should the Landlord’s One Month Notice be cancelled?

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

Background and Evidence

I have reviewed the evidence, including the testimony of the Landlord’s property manager, but will refer only to what I find relevant to my decision.

Evidence establishes this tenancy began on February 15, 2023 and has continued on a month-to-month basis. The Tenant’s current monthly rent is \$875.50. On February 11, 2023, the Tenant provided the Landlord with security and pet damage deposits each in the amount of \$425.00. A copy of the tenancy agreement together with a copy of the most recent notice of rent increase were submitted in evidence.

On December 20, 2024, the Landlord issued a One Month Notice to End Tenancy for Cause. The effective (move-out) date provided in the Notice was January 19, 2025. The basis for the Notice was the Tenant’s significant interference with, or unreasonable disturbance of, other occupants in the rental building. The Notice referred to several disturbances made by the Tenant during the tenancy. A copy of the Notice was provided in evidence. The Landlord served the Notice to the Tenant by posting on the rental unit door on December 20, 2024. A copy of a completed Proof of Service form signed by a witness was also submitted by the Landlord to confirm service of the Notice to the Tenant in a manner authorized by the Act.

The Landlord provided several written warnings it had issued to the Tenant regarding noise disturbance complaints they had received from other tenants, violence occurring in the unit, suspected illegal drug use and/or drug dealing in the unit, local law enforcement attending to complaints lodged against the Tenant, and damage to the interior of the unit. The Landlord submitted copies of written warnings to the Tenant issued in September, November and December 2023; as well as January, February,

April, May, July, August, September and December 2024. The Landlord's property manager testified that two neighboring tenants had moved out due to the Tenant's noise and the disturbances from her unit. The Landlord also submitted photographs taken of the interior of the unit at the start of the tenancy to contrast with photographs taken recently by the Landlord when it inspected the unit. The Landlord's representative stated the damage was extensive.

The Tenant denied receiving all written warnings, stating she recalled only receiving three warnings. She testified the noise from her unit was a result of cockroaches in the unit, explaining that she was a quiet tenant otherwise. The Tenant stated the Landlord had failed to take remedial measures when she informed the Landlord of the cockroach problem, resulting in her removal of flooring in the unit. The Tenant attributed any noise complaints to these "renovations" she was making in the unit because of the pest problem.

The Landlord's property manager testified a pest control company had treated the unit and they have available caretaker(s) who can provide pest control in a unit. She further stated the Landlord had not authorized the Tenant to undertake any renovation or repair of the unit.

Analysis

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

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. If the tenant fails to timely file an application within the 10 days, under section 47(5), the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date and to move out by that date. I find the Notice complies with section 52 of the Act.

On her application for dispute resolution, the Tenant states she received the One Month Notice on January 6, 2025 and filed for dispute resolution that same date. Upon inquiry that the Notice had been posted to her rental unit door on December 20, 2024 but she had not filed an application until January 6, 2025, the Tenant testified that she lacked internet during that time precluding her from submitting an on-line application to the RTB. She further stated she was working with a social worker at the time and required that individual's assistance, and "totally forgot" there was a ServiceBC center in the area where she could submit an application to the RTB. The Tenant admitted she did not submit an application requesting additional time to file her application.

Section 90(c) deems service of a record on the third day after posting the document to the rental unit door, unless earlier service is established. In this case, the Landlord posted the One Month Notice to the rental unit door on December 20, 2024. The Landlord submitted into evidence a completed proof of service form signed by a witness attesting to this service on that date. Thus, I find the Tenant was deemed served with the One Month Notice on December 23, 2024. Therefore, the Tenant had 10 days from that date – that is, to January 2, 2025 – to submit her application for dispute resolution. The Tenant's application was filed on January 6, 2025.

Section 59(1) of the Act states 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. I find the Tenant did not provide sufficient evidence to establish an exceptional circumstance to support a finding to extend the time limit to file her application to cancel the One Month Notice. It is noted the Tenant's application was submitted on-line to the RTB and she did not provide any testimony or supporting evidence that she had no internet access available to her that precluded her from timely filing. Additionally, the Tenant attended and represented herself during the hearing without the assistance of a social worker. Furthermore, the Tenant could have submitted a paper application through a ServiceBC center but "totally forgot" this was an available option. None of the circumstances described by the Tenant establishes an exceptional circumstance warranting the extension of the time within which she was required to file her application to cancel the One Month Notice. Therefore, I find the Tenant is conclusively presumed to have accepted the end of the tenancy and move out by the effective date stated in the One Month Notice.

Moreover, the Landlord provided sufficient evidence in support of the issuance of the One Month Notice. The Landlord had issued multiple warning letters to the Tenant regarding her noise level in the unit between September 2023 and November 2024. The Landlord's representative testified two tenants moved out based upon the Tenant's noise and disturbances in the unit. The Tenant's testimony that cockroaches were the predicate for the noise in her unit that resulted in her renovating the unit and disturbing other residents defies credibility.

For the above reasons, the Tenant's application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act is dismissed, without leave to reapply. I dismiss without leave to reapply the Tenant's request for repairs to the unit as moot. I make no findings on the Tenant's request for repairs to the unit.

I find the Landlord is entitled to 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.

Conclusion

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

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 31, 2025

Residential Tenancy Branch