



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNC, MNRT, PSF, LRE, OLC / OPC-DR

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

In their Application the Tenant seeks:

1. An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the Act;
2. A monetary order for the cost of emergency repairs under sections 33 and 67 of the Act;
3. An order requiring the Landlord to provide services or facilities as required by the tenancy agreement or the Act under section 62 of the Act;
4. An order to suspend or set conditions on the Landlord's right of entry to the rental unit under section 70 of the Act; and
5. An order for the Landlord to comply with the Act, the *Residential Tenancy Regulation*, or tenancy agreement under section 62 of the Act.

In its Application the Landlord seeks:

1. An Order of Possession based on the Notice under section and 55(2)(b) of the Act.

An Agent for the Landlord attended the hearing. The hearing started at 9:30 AM and the line was left open until 9:46 AM to enable the Tenant to call in, however they did not

attend and the hearing proceeded in their absence under rule 7.3 of the Residential Tenancy Branch *Rules of Procedure* (the Rules).

Service of Notice of Dispute Resolution Proceeding and Evidence

The Landlord's Application

The Landlord's Agent testified they served the Notice of Dispute Resolution Proceeding Package (the Materials) and the Landlord's evidence to the Tenant by registered mail on April 11, 2025. The Canada Post receipt and tracking number for the package for the Tenant were provided by the Landlord as evidence. The tracking number is provided on the first page of this Decision. A copy of the postage label for the package sent to the Tenant was also included into evidence. I find the address on the postage label matches the address for the rental unit, per the Application.

In light of the above evidence from the Landlord and affirmed testimony of the Landlord's Agent, I find that the Landlord's Materials and evidence were served in accordance with sections 88 and 89 of the Act. A review of the tracking information indicates the package was received on April 16, 2025.

The Tenant's Application

The Landlord's Agent affirmed that Landlord had received no notification of the Tenant's dispute either formally through receipt of the Materials for the Tenant's Application, or through informal correspondence with the Tenant.

As already noted in this Decision, the Tenant did not attend the hearing to present evidence on the subject of service of their Materials. The Tenant was made aware of this hearing since they were provided with the hearing date after their Application was processed by the Residential Tenancy Branch. They were also provided with a reminder of the hearing three days before it took place. From this I find the Tenant had adequate notice the hearing was taking place so had the opportunity to attend if they wished. The Tenant also did not provide any written evidence to support the Materials were served to the Landlord, or any written evidence at all in support of their Application.

Rule 3.1 and section 59(3) of the Act states that an applicant must serve their Notice of Dispute Resolution Proceeding Package to the respondent within three days of them

being made available by the Residential Tenancy Branch. Section 89 of the Act sets out the ways in which an applicant must give the Application Materials to the respondent.

Based on the above, I find the Tenant has failed to establish the Materials were served to the Landlord in a manner compliant with section 89 of the Act.

Preliminary Issue – Dismissal of the Tenant's Claims

Since I find the Tenant failed to demonstrate they notified the Landlord of their dispute by serving them with the Materials, and failed to attend the hearing, I dismiss the Tenant's Application.

Multiple claims were raised in the Tenant's Application and, as will be set out further on in this Decision, I granted the Landlord's Application for an Order of Possession. Therefore, I find it appropriate to give thought as to whether leave to reapply is provided regarding each of the Tenant's claims.

Since the tenancy is ended under the Notice, I dismiss the Tenant's request to cancel it without leave to reapply. I also dismiss without leave to reapply the claims numbered 3 to 5 in the Introduction section of this Decision as I find these disputes relate to an ongoing tenancy, so are now moot in light of the tenancy ending under the Notice.

As the Tenant still has standing to claim from the Landlord purported costs of emergency repairs they incurred even after the tenancy has ended, I dismiss this claim with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue to be Decided

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

Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

In their affirmed testimony, the Landlord's Agent set out the following regarding this tenancy:

- The tenancy began on November 9, 2020 on a month-to-month basis from the start.
- Rent was initially \$900.00 per month due on the first day of the month and through annual rent increases it now stands at \$950.13 per month.
- The Tenant paid a security deposit of \$450.00 which the Landlord still holds.
- The Tenant still occupies the rental unit, the lower portion of a house in West Kelowna.
- There is a written tenancy agreement, a copy of which was entered into evidence by the Landlord.
- The written tenancy agreement contains a minor typographical error and lists the wrong street number for the rental unit. The Applications of both parties list the correct civic address with no unit or suite numbers needed.

The Landlord's Agent testified as follows. They served the Notice to the Tenant on March 26, 2025 by attaching it to the door of the rental unit and did so in the presence of a witness. A completed Proof of Service form signed by the witness was provided as evidence by the Landlord.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed by the Landlord's Agent, is dated March 26, 2025 and provides an effective date of April 30. The reasons for ending the tenancy, per the Notice is:

- 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 another occupant or the landlord; and
 - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site/property/park.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Per the Landlord's Agent, the Notice was issued because the issues raised in a breach letter sent by the Landlord to the Tenant on February 19, 2025 were not corrected within 30 days. A copy of the letter was submitted as evidence.

The Landlord's Agent testified that the Tenant had breached numerous terms of the addendum to the tenancy agreement by allowing multiple unauthorized occupants in the rental unit, allowing pets in the rental unit, exceeding the restrictions on the number of vehicles that may be parked on the residential property and doing so with uninsured vehicles, smoking in the rental unit, leaving the outdoor area in an unkempt manner, repeatedly paying rent late and by carrying out authorized repairs to the toilet in the rental unit.

The Landlord's Agent indicated that as the Tenant had failed to pay rent for April and May 2025, the Landlord seeks an Order of Possession effective as soon as possible under the Notice.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 47 of the Act permits a landlord to end a tenancy by issuing a Notice to End Tenancy for Cause in the approved form. Section 47(4) of the Act confirms that a tenant may dispute a Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days of receiving the notice. As noted above, if this happens, the landlord must prove the reason they wish to end the tenancy.

Section 47(5) of the Act states that if a tenant receives a notice under this section of the Act and does not make an application for dispute resolution within ten days of receipt of the notice, they are 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. If a tenant

does not vacate a rental unit in accordance with a notice for cause or dispute it, a landlord may seek an Order of Possession under section 55(2)(b) of the Act.

Based on the undisputed testimony of the Landlord's Agent and the evidence before me, I find that the Notice was issued to the Tenant on March 26, 2025 by attaching to the door of the rental unit. Therefore, it would be deemed received on March 29, 2025, the third day after it is served in accordance with section 90(c) of the Act.

The Tenant submitted their Application where, amongst other things, they disputed the Notice on March 31, 2025 but as previously mentioned in this Decision, I find the Tenant failed to establish they notified the Landlord of their dispute, and their request to cancel the Notice was dismissed.

Based on the above, I find the provisions of section 47(5) of the Act apply and the Tenant is conclusively presumed to have accepted the Notice and that the tenancy ended on April 30, 2025, due to the failure of the Tenant establish they notified the Landlord of their dispute. I also find the Notice complies with the form and content requirements set out in section 52 of the Act.

If the provisions of section 47(5) of the Act were to be disappplied by a tenant submitting an application disputing a notice, then not notify a landlord of this, but the burden still shifted onto the landlord to establish the reasons for ending the tenancy set out on the notice, I find this would result in absurdity.

In this case, the Landlord was not aware of the Tenant's dispute of the Notice and was therefore entitled to rely on the notion the Tenant had accepted it, and that section 47(5) of the Act applies. I find that not only was the Landlord unaware of the Tenant's dispute of the Notice, but they were also unaware of the Tenant's reasons for disputing the Notice. The Landlord's Application was crossed with the Tenant's since it pre-dated the Landlord's, but the Landlord was clearly unaware of the Tenant's dispute. The Landlord appears to have prepared their Application on the basis the Notice went undisputed so their evidence focused largely on service, not the reasons behind the Notice, as is typical for applications from landlords under section 55(2)(b) of the Act, since they are operating under the assumption the tenant has not challenged the notice.

From looking at the Act as a whole in the context of tenants disputing notices to end tenancy, I find given the provisions of section 59(3) set out that a party must give a copy of the application to the other in order to start proceedings, submitting an application

disputing a notice alone does not fulfil the requirements of section 47(4) of the Act and that the tenant must also follow through with their statutory requirements and notify the respondent landlord in the matter.

Based on the above findings, the Landlord is entitled to an Order of Possession under section 55(2)(b) of the Act. As the deemed effective date of the Notice has passed, I grant the Landlord an Order of Possession effective seven days from service.

Per Policy Guideline 54 - *Ending a tenancy: Order of Possession*, effective dates of Orders of Possession are generally set to seven days after the Order is received, though an Arbitrator may extend the effective date of an Order of Possession beyond the usual seven days. Considering the duration of the tenancy is reasonably significant at over four and a half years, I considered extending the Order of Possession beyond the usual seven days, but accepting the undisputed testimony of the Landlord's Agent, I find the Tenant has failed to pay rent for the last two months, so deem an Order of Possession effective seven days from service appropriate in this case.

Conclusion

The Landlord's Application is granted.

The Landlord is issued an Order of Possession. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant must vacate the rental unit by 1:00 PM on May 31, 2025. If the Tenant does not comply with the Order of Possession, it may be filed by the Landlord with the Supreme Court of British Columbia 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 6, 2025

Residential Tenancy Branch