



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding RIVER DAM HOLDINGS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL | OPU-DR, FFL

Introduction

This hearing dealt with two applications made by the Landlord under the *Residential Tenancy Act* (the “Act”) for:

- an Order of Possession under a One Month Notice to End Tenancy for Cause dated November 29, 2022 (the “One Month Notice”) pursuant to section 55;
- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 26, 2023 (the “10 Day Notice”) pursuant to section 55; and
- authorization to recover the filing fees for both applications from the Tenant pursuant to section 72.

The Landlord’s agent and legal counsel SP attended this hearing and made submissions on behalf of the Landlord.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:53 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that SP and I were the only ones who had called into the hearing.

I informed SP that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

SP confirmed that the Landlord served the notice of dispute resolution proceeding package for the application regarding the One Month Notice (the “First Package”) on the

Tenant via registered mail on December 22, 2022. The Landlord submitted a tracking number in support of service (referenced on the cover page of this decision).

SP confirmed that the Landlord served the notice of dispute resolution proceeding package for the application regarding the 10 Day Notice (the “Second Package”) on the Tenant by attaching it to the Tenant’s door on February 19, 2023. The Landlord submitted a signed and witnessed proof of service form in support.

SP further confirmed that the Landlord’s documentary evidence was included with the First Package and the Second Package.

Based on the foregoing, I find the Tenant was served with the First Package in accordance with sections 88(c) and 89(2)(b) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the First Package on the fifth day after mailing, or December 27, 2022. I find the Tenant was served with the Second Package in accordance with sections 88(g) and 89(2)(d) of the Act. Pursuant to section 90(c) of the Act, I find the Tenant is deemed to have received the Second Package on the third day after attaching to the door, or February 22, 2023.

Having found the Tenant to be deemed served with notice of the Landlord’s applications, this hearing, and the Landlord’s documentary evidence, I directed this hearing to proceed in the absence of the Tenant.

Preliminary Matter – Previous Notice to End Tenancy

As mentioned below, the Landlord’s evidence refers to a two month notice to end tenancy issued to the Tenant by the previous owner of the property. I find there is insufficient evidence as to whether this notice was valid in form and content and had been validly served. I note the Landlord has issued new notices to end tenancy, namely, the One Month Notice and the 10 Day Notice, and Landlord’s evidence is that the Tenant has not vacated the property. Given the length of time which has passed since the effective date of the two month notice, I am of the view that such notice, even if it had been valid, is likely to have been waived by the conduct of the parties.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession under the One Month Notice?
2. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?

3. Is the Landlord entitled to reimbursement of its filing fees?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's applications and my findings are set out below.

This tenancy pre-dates the Landlord's purchase of the property on May 2, 2022. The Tenant was served with a two month notice to end tenancy by the previous owner, effective April 30, 2022, but never vacated the property. The Tenant continues to reside in the property without making any payments to the Landlord and without entering into a new tenancy agreement with the Landlord.

The Landlord submitted a copy of the One Month Notice into evidence. It is signed by SP on behalf of the Landlord and has an effective date of January 3, 2023. The stated reasons for ending the tenancy are:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- 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
- 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
- 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
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent

Attached to and referenced on the One Month Notice is a document titled Appendix A.

According to Appendix A, the Tenant appears to be operating a bike shop from the property, has allowed others to move into the property, has caused various disturbances at the property, and has caused damage to the property. Since around September 2022, the Tenant has refused access to the property by any of the Landlord's agents.

The Landlord submitted a signed and witnessed proof of service form which indicates that a copy of the One Month Notice was given in person to the Tenant on December 5, 2022. The Landlord also submitted photos of the property into evidence.

In addition, the Landlord submitted a copy of the 10 Day Notice into evidence. This document is signed by SP as agent for the Landlord and has an effective date of February 6, 2023. It states the Tenant failed to pay utilities of \$1,000.79 following written demand on December 22, 2022. The Landlord submitted a signed proof of service form with an acknowledgment indicating that an individual residing at the property, SG, received copy of the 10 Day Notice in person January 27, 2023. The Landlord also submitted copies of a written demand dated December 22, 2022 and various utility bills.

Analysis

1. Is the Landlord entitled to an Order of Possession under the One Month Notice?

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

47(3) of the Act requires that a notice to end tenancy for cause comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
(e) when given by a landlord, be in the approved form.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content. I find that the grounds for ending the tenancy stated in the One Month Notice corresponds to causes described in section 47(1) of the Act.

Based on the Landlord's evidence, I find the Tenant was served with a copy of the One Month Notice in person on December 5, 2022, in accordance with section 88(a) of the Act.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until December 15, 2022 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by December 15, 2022 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(4), the tenant is 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.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was served on December 5, 2022, the time for disputing the One Month Notice expired on December 15, 2022, and the Tenant did not make an application for dispute resolution. Accordingly, I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

The effective date stated on the One Month Notice is January 3, 2023. Based on the Landlord's evidence that the Tenant received the One Month Notice on December 5, 2022, I find the corrected effective date of One Month Notice is deemed to be January 31, 2022, pursuant to sections 47(2) and 53(2) of the Act.

As the corrected effective date of the One Month Notice has long passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to an Order of Possession under the 10 Day Notice?

Since I have already granted the Landlord an Order of Possession under the One Month Notice, I find it is not necessary to consider whether the Landlord is also entitled to an Order of Possession under the 10 Day Notice.

3. Is the Landlord entitled to reimbursement of its filing fees?

The Landlord has been successful in obtaining an Order of Possession. I grant the Landlord recovery of its filing fees pursuant to section 72(1) of the Act.

Conclusion

The Landlord's claims for an Order of Possession and reimbursement of its filing fees are successful.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. 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 in the Supreme Court of British Columbia and be enforced as an order of that Court.

Pursuant to section 72(1) of the Act, I grant a Monetary Order to the Landlord in the amount of **\$200.00** for reimbursement of the Landlord's filing fees. This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 25, 2023

Residential Tenancy Branch