



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC

Introduction

This hearing convened in response to the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) issued by the landlord.

The tenant, someone the tenant variously described as a tenant, occupant and boyfriend, TH, and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed. The parties were cautioned against interrupting during the hearing. Three of the landlord's seven witnesses were called in and provided affirmed testimony during the 94 minute hearing.

No issues were raised regarding service of the tenant's application or evidence. The landlord provided no documentary evidence, relying on the witness' testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Near the beginning of the hearing, the tenant referred to TH as a tenant, as the original co-tenant listed on the written tenancy agreement vacated 2 years earlier and TH has moved into the rental unit.

Due to the date the tenant filed their application, service of the 1 Month Notice was considered. In their application, the tenant wrote they received the Notice on December 11, 2022, when it was taped to the door.

The landlord said they handed the Notice to TH on December 8, 2022, the Notice date. The landlord said the delivery was witnessed.

The tenant then said TH was not a tenant at that time, but provided no specific information or time as to when TH became a tenant.

I asked TH if they received the Notice from the landlord, and they replied they had. TH said that they did not want to read the papers meant for the tenant and instead, they taped the Notice to the door.

The tenant then said staff at Service BC told them because the 1 Month Notice was taped to the door, the tenant had 3 additional days to dispute the Notice. The tenant at the hearing was unable to provide specific testimony as to when they filed their application, but believed they filed it within the allowed time. The tenant could not locate their evidence at the hearing, but continued to look for it.

The tenant was informed that the matter of whether they filed their application within the required time would be a consideration and factor in my Decision. Out of an abundance of caution, I allowed the parties to present evidence at the hearing relating to the Notice; however, at the conclusion of the hearing, I informed both parties that I still reserved my right to address and consider whether the tenant submitted sufficient evidence to show they filed their application in time.

At the conclusion of the hearing, the tenant was informed that I would allow them to submit their evidence showing when their application was filed and completed. The tenant was informed that I would allow them until 12:00 noon, the following day, April 29, 2023, to upload the evidence to the RTB digital file. I note the tenant's application was made online and their original evidence was filed by uploading it into the RTB digital file created for their application.

The tenant was also instructed to send by email to the landlord a duplicate copy of the evidence that was uploaded.

By 12:00 noon on April 29, 2023, the tenant submitted two pieces of evidence, which were two screen shots of text messages.

I will address these matters and my findings later in this decision.

As an additional preliminary matter, the tenant applied for an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of a Rental Unit, issued by the landlord, rather than seeking cancellation of a 1 Month Notice. I found it necessary to amend the tenant's application, for the correct issue, as the tenant has not been served a 4 Month Notice.

Issue(s) to be Decided

Did the tenant file their application within the required time and, if so, should the Notice be cancelled or upheld?

Background and Evidence

The tenant submitted a written tenancy agreement showing a 1 year, fixed-term tenancy start date of November 1, 2015. The tenants listed on the tenancy agreement were the tenant and another tenant, who according to the tenant, vacated two years earlier.

The subject of this dispute is the 1 Month Notice issued to the tenant. The Notice filed in evidence was dated December 8, 2022, and listed an effective move-out date of January 31, 2023.

The causes listed on the Notice were:

- Tenant or a person permitted on the property by the tenant has;
 - significantly interfered with or unreasonably disturbed another occupant or the landlord,
 - 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:

- adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant of the property.
- Tenant has assigned or sublet the rental unit without landlord's written consent.

In the details of causes, the landlord wrote the following:

Details of the Event(s):	
Continuous playing of loud music in early hours of the morning.	
Smashing furniture in her unit, RCMP had to be called.	
Excessive use of candles due to non payment of electric bills.	City cuts off power. Fire Hazard.
Constant disruptions to tenant through misbehavior.	
Due to excessive drug use, she turns on water and lets it overflow and causes damages in lower suites.	
She allows her homeless friends to come into the building, creating havoc with other tenants.	
She sublets unit to "[redacted]" without landlords permission.	

[Reproduced as written except for anonymizing personal information to protect privacy]

The additional evidence filed by the tenant after the hearing, was a confirmation that the tenant created a "Basic BCeID" account on December 24, 2022, allowing access to participating government services. Also included was a partial screen shot of communication from the RTB with the dispute application number and instructions to submit proof of income to support the fee waiver, also dated December 24, 2022.

Analysis

Based on the documentary and oral evidence provided, and on a balance of probabilities, I find the following.

Section 47 of the Act authorizes a landlord to seek to end a tenancy for a variety of reasons by providing a tenant with a notice to end tenancy that complies with section 52 of the Act.

The 1 Month Notice provided information to the tenant, which explained on two (2) separate pages of the 3-page Notice that the tenant had the right to dispute the Notice **within 10 days** by filing an application for dispute resolution at the Residential Tenancy Branch online, in person at any Service BC Office or by going to the RTB office in Burnaby in dispute of the Notice.

The Notice also explains on two (2) separate pages of the 3-page Notice that if the tenant did not file an application to dispute the Notice within the required time limit, 10 days, then the tenant is **presumed** to have accepted the end of the tenancy and **must** move out of the rental unit by the effective date of the Notice. These instructions are provided in sections 47(4) and 47(5) of the Act.

Although the tenant submitted on their application they received the Notice on December 11, 2022, I do not accept this statement.

TH was served the 1 Month Notice personally by the landlord on December 8, 2022, as confirmed by TH and as claimed by the landlord.

The Act states that one way documents may be served is by leaving a copy at the person's residence with an adult who apparently resides with the person. As the tenant stated that TH was a tenant at the beginning of the hearing, I find the tenant was served the 1 Month Notice on December 8, 2022.

As the tenant changed their testimony during the hearing, which differed from their documentary evidence, about the status of TH, I do not accept their statement that the Notice was received on December 11, 2022. I find it does not make sense that TH taped the Notice to the door, rather than hand the Notice to the tenant or place it somewhere in the unit.

Rule 2.6 applies and is reproduced as follows:

Point at which an application is considered to have been made:

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

As part of a dispute resolution application, a digital file is created by the RTB, and any activity on the file is noted in the system. In this case, the RTB notes to file show the tenant's file was created on December 24, 2022 and that on January 4, 2023, the tenant was informed by email from the RTB that their application required changes before their incomplete application would be processed.

As I have found that the tenant was served the 1 Month Notice to End Tenancy, on December 8, 2022, I find the tenant had until **December 18, 2022**, to file and complete their application to dispute the Notice. The tenant did not begin the application until December 24, 2022, and completed it on January 4, 2023

As this is more than 10 days after they received the Notice, I find that the tenant did not file their application to dispute the Notice within the timeline established by section 47(4) of the Act.

Even if I accept the tenant received the 1 Month Notice on December 11, 2022, which I do not, the tenant would still not have filed within the time required by the Act.

Due to the above, I find the tenant was conclusively presumed to have accepted that the tenancy ended on January 31, 2023, the effective date of the Notice, which in turn, means they must vacate by January 31, 2023.

For this reason, I **dismiss** the tenant's application seeking cancellation of the 1 Month Notice without leave to reapply, as I find it was filed outside the required time to dispute the Notice.

I order that the tenancy ended on January 31, 2023, as a result of the above.

In reviewing the Notice, I find it was on the RTB approved form with content meeting the statutory requirements under section 52 the Act.

I find that the landlord is entitled to, and I **grant an order of possession for the rental unit effective 2 days after it has been served on the tenant, pursuant to section 55(1)(b) of the Act.**

The order of possession must be served on the tenant to be enforceable. Should the tenant fail to vacate the rental unit, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **informed** that costs of such enforcement, such as **bailiff fees**, are recoverable from the tenant.

Conclusion

The tenant's application is dismissed, without leave to reapply.

The landlord has been issued an order of possession for the rental unit, effective 2 days after service on the tenant.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 29, 2023

Residential Tenancy Branch