

DECISION

Introduction

This hearing dealt with applications from both the Landlord and the Tenant.

The Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) is 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
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The Tenant's Application for Dispute Resolution under the Residential Tenancy Act (the Act) is 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
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's Agent, Y.T.Z, attended the hearing for the Landlord.

The Tenant T.S. and their interpreter A.Z. attended the hearing for the Tenant.

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

The parties both testified that they were served with the Proceeding Package and evidence of the other party. No issues of service were raised. I find each party served the other under sections 88 and 89 Act.

Issues to be Decided

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

Are either of the parties entitled to recover the filing fee for their application from the other?

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.

Evidence was provided showing that this tenancy began on September 20, 2024, with a monthly rent of \$4,200.00 per month, due on the 20th day of the month, with a security deposit of \$2,100.00. The rental unit is an apartment style condo in a high-rise building.

The Landlord issued a One Month Notice to End Tenancy to the Tenant on April 11, 2025 (the "One Month Notice"). The Tenant confirms receipt of the One Month Notice on April 12, 2025. The One Month Notice stated that the Tenant must move out of the rental unit by May 11, 2025. The Tenant made their application to dispute the One month Notice on May 5, 2025, the same day that the Landlord made their application for an Order of Possession.

The Tenant testified that they did not dispute the One Month Notice within 10 days of receiving it because they were investigating how to dispute it. The Tenant also said that they believed they were close to reaching a mutual agreement with the Landlord which would end this tenancy, and the Landlord was drawing out the negotiations to make the Tenant late. The Tenant testified that they messaged the Landlord who responded, 'give me a few days.' The Tenant did not provide the text messages as evidence.

The reasons for ending this tenancy stated on the One Month Notice are:

- 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 knowingly gave false information to prospective tenant or purchaser of the rental unit.
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

In the details of cause section of the One Month Notice, the Landlord states, in part, that the Tenant has been using the rental unit as a short-term rental to tourists, despite being aware that the strata by-laws prohibit such activity.

The Landlord provided copies of advertisements of the rental unit listed for rent on short-term rental websites.

The Landlord provided copies of letters and e-mails from the strata corporation ("the Strata") advising the Landlord that short term rentals are happening in the rental unit, and that such are prohibited under the strata by-laws. The e-mails and letters from the Strata include photos of visitors and statements from the concierge that these visitors told the concierge that they rented the rental unit as a short-term rental.

The Landlord's Agent testified that the Strata fined the Landlord for breaching the bylaws by allowing short term rentals in the rental unit. The Landlord provided copies of

the communications, and their account which shows that the fines that the Strata levied against the Landlord.

The Landlord's Agent testified that they have spoken with the Tenant about ending this tenancy early because the Tenant was using the rental unit as a short-term rental. The Landlord gave the notices from the Strata to the Tenant.

The Tenant testified that they do not rent out the rental unit as a short-term rental. The Tenant testified that they have had visitors to the rental unit, and that they are allowed to have visitors. The Tenant testified that they had a disagreement with staff at the building at the start of the tenancy and the concierge could be lying. The Tenant testified that they have tried to communicate with the Strata, but the Strata has refused to communicate with the Tenant. The Tenants evidence consists of videos of the concierge or other staff members outside of the rental unit, and photos of a camera that points at the rental unit. The Tenant did not provide any evidence to show that the Tenant lives in the rental unit.

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 (1)(i) of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the tenant purports to sublet the rental unit without first obtaining the landlord's written consent as required by section 34 of the Act.

Section 47(2) of the Act states that the effective date of the end of the tenancy must be not earlier than one month after the notice is received and be the day before the day in the month that rent is due. Section 53 of the Act states that if a notice to end a tenancy has an effective date that is earlier than is allowed, then the effective date is deemed to be the earliest date that would comply with the section.

I find that the effective date of the One Month Notice is May 19, 2025, because that is at least one month after the notice was issued, and is the day before rent was due next.

Section 47(4) 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.

Based on the Tenant's testimony, I find that the Tenant received the One Month Notice on April 12, 2025, and the Tenant had until April 24, 2025, to dispute the One Month Notice. The Tenant did not dispute the One Month Notice until May 5, 2025.

The Tenant has applied for dispute resolution requesting more time to cancel the One Month Notice. 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 to dispute a notice to end tenancy beyond the effective date of the notice.

Residential Tenancy Branch Policy Guideline 36 states that the word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. An ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The party requesting the extension of time must have some persuasive evidence to support the truthfulness of what is said.

The Tenant testified that they were negotiating an end to the tenancy when the time limit passed to make the application to cancel the One Month Notice. The Tenant testified that the Landlord was drawing things out to make the Tenant late, but the Tenant provided no documentary evidence of this. The Landlord's Agent testified that when the Tenant refused to move out early, they made this application. The parties had attempted earlier to negotiate an end to this tenancy.

I find that the Tenant did not take reasonable steps in the circumstances, such as calling the Residential Tenancy Branch for assistance, or asking the Landlord to provide more information. The Tenant did not provide evidence to prove that the Landlord contributed to the delay.

The Tenant provided no evidence or compelling reason why their 'investigation' into how to respond to this matter made their application late. In short, I find that the Tenant provided no persuasive evidence to support their request for an extension of time.

On a balance of probabilities, based on the evidence and testimonies before me, I find that the Tenant has not established that there are exceptional circumstances which justify the extension of the time limit to dispute the One Month Notice.

In consideration of the above, and in accordance with section 47(5) of the Act, due to the failure of the Tenant to make their application within ten days of receipt of the One Month Notice, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on May 19, 2025, the effective date of the One Month Notice.

For the above reasons, the Tenants' application for cancellation of the Landlord's One Month Notice to End Tenancy for Cause under section 47 of the Act is dismissed, without leave to reapply.

As I have dismissed the Tenant's application, I find it is not necessary to consider the merits of the One Month Notice. However, I find that I must consider whether the Landlord has met the statutory requirements under the Act to end the tenancy. I have reviewed the One Month Notice, and I find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 of the Act.

I find that, on a balance of probabilities, the Tenant sublet the rental unit without the Landlord's permission in writing as required by the tenancy agreement and section 34 of the Act. I accept the testimony of the Landlord's Agent, and the letters and photos from the Strata as proof that the Tenant allowed short term rentals in the rental unit. I find

that the Tenant breached section 34 of the Act, and that the Landlord had sufficient cause to end this tenancy under section 47(1)(i) of the Act.

Therefore, I find that the Landlord has met the statutory requirements under the Act to end this tenancy. As such, I find that the Landlord is entitled to an Order of Possession based the One Month Notice under sections 47 and 55 of the Act.

Filing Fee

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.

Under section 72 of the Act, the Landlord may retain \$100.00 from the Tenant's security deposit.

Conclusion

I grant an Order of Possession to the Landlord effective **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.

The Tenants' 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

This tenancy continues until it is ended in accordance with the Act.

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: July 7, 2025

Residential Tenancy Branch