



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Li-Car Management Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord representative DF testified that he posted the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) entered into written evidence for this hearing on the tenant's door on March 20, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 23, 2014, the third day after its posting on her door.

Landlord representative DS testified that she sent the tenant a copy of the landlord's dispute resolution hearing package and written evidence package by registered mail on April 9, 2014. She entered into written evidence a proof of service document regarding her registered mailing and a copy of the Canada Post Customer Receipt containing the Tracking Number. DS testified that Canada Post returned this registered mail unclaimed. In accordance with section 88, 89(2) and 90 of the *Act*, the tenant was deemed served with the landlord's evidence and dispute resolution hearing package on April 14, 2014, the fifth day after the registered mailing of this material to the tenant.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence a copy of the periodic Residential Tenancy Agreement (the Agreement) signed by the parties on March 21, 2013. According to the

terms of the Agreement, the tenant was to gain possession of the rental unit on April 1, 2013. Monthly rent is set at \$525.00, payable in advance on the first. Landlord representative DS testified that the tenant's rent is paid until the end of May 2014. The landlord continues to hold the tenant's \$262.50 security deposit paid on April 1, 2013.

The landlord entered into written evidence three warning/breach letters posted on the tenant's door between November 27, 2013 and March 10, 2014. These letters warned the tenant that her behaviours were causing problems for other tenants in this building and that if she did not cease these behaviours, it was possible that her tenancy could end for cause on the basis of a 1 Month Notice.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by April 30, 2014. This Notice cited the following reasons for the issuance of the Notice:

Tenant has allowed an unreasonable number of occupants in the unit/site

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;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord....*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Landlord representative DF testified that the tenant's noisy behaviours late in the night did not cease after the warning letters were posted. He testified that the tenant continues to let people into this building to visit her at all hours of the day and night.

Analysis

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 30, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. Although the tenant has paid her rent for May 2014, the timing of this decision is such that the landlords are unlikely to receive this decision and Order before the end of May. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application. Although the landlord's application does not seek to retain any portion of the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to recover the \$50.00 cost of the filing fee by retaining \$50.00 from the tenant's security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$50.00 from the tenant's security deposit in order to implement my decision to grant the landlord the recovery of the filing fee for this application. The remaining value of the tenant's security deposit is hereby reduced from \$262.50 to \$212.50.

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: May 28, 2014

Residential Tenancy Branch

