



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on April 6, 2015 seeking to obtain an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by two agents for the Landlord who gave affirmed testimony. Therefore, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa. No one was in attendance for the Tenant.

The Landlord provided documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on April 13, 2015. Canada Post tracking information was submitted into evidence and confirmed that Canada Post attempted delivery of the package on April 14, 2015, and that a notice card was left that date to advise the Tenant they could pick up the registered mail. The tracking information also confirms Canada Post gave a second and final notice on April 21, 2015, that the registered mail was available for pick up.

As of May 2, 2015 the Canada Post tracking information confirmed that the Tenant still did not pick up the registered mail and the package was returned to the Landlord. Based on this information, I find that the Tenant was provided with 3 opportunities to receive the registered mail and they did not make an attempt to retrieve it. I find this to be a deliberate effort on the part of each Tenant to avoid service and I find the Tenant was sufficiently served with Notice of this hearing, pursuant to Section 71 of the *Act*. Therefore, I continued in absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a subsequent fixed term tenancy agreements. The first agreement began on October 1, 2014 at which time the

Tenant paid \$187.50 as the security deposit. A second fixed term tenancy was entered into effective March 1, 2015 and was set to expire on July 31, 2015.

The Landlords testified that the Tenant was served a 1 Month Notice to end tenancy on February 28, 2015, when it was posted to the Tenant's door. Shortly after the Notice was served to the Tenant, the Landlords stated that the Tenant told them that she would not be moving out as she had "squatter's rights". The Tenant continues to reside in or access the rental unit and has not paid rent for April or May. The Landlords seek possession for as soon as possible.

A copy of the 1 Month Notice dated February 28, 2015 was submitted into evidence. The Notice was issued pursuant to Section 47(1) of the Act listing an effective date of March 31, 2015 for the following reasons:

- 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
- 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 or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their evidence.

Upon review of the 1 Month Notice to End Tenancy issued February 28, 2015, I find the Notice was served upon the Tenant in a manner that complies with the Act. The effective date of the Notice was **March 31, 2015**.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than March 13, 2015. At the time the Landlord filed their application for an Order of Possession on April 06, 2015, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date. Accordingly, I grant the Landlord's application.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been granted an Order of Possession effective **2 Days upon Service** to the Tenant. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord may deduct the one time award of **\$50.00** from the Tenant's security deposit, as full satisfaction of the recovery of their filing fee.

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 19, 2015

Residential Tenancy Branch

