



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, FF

Introduction

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

- an Order of Possession on the basis of the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered written evidence supported by sworn testimony at the hearing attesting to the landlord's posting of the 1 Month Notice on the tenant's door on July 6, 2015. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on July 9, 2015, the third day after its posting.

The landlord also provided written evidence confirming that a copy of the landlord's dispute resolution hearing package and written evidence were sent to the tenant by registered mail on September 24, 2015. Landlord LD (the landlord) testified that she had checked Canada Post's Online Tracking System and discovered that the tenant had picked up this registered mail package on October 7, 2015. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the dispute resolution hearing package and written evidence on October 12, 2015, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On July 13, 2015, the tenant signed a periodic tenancy agreement for a subsidized rental unit in this building. The tenant moved into this rental unit on or about August 1, 2013. As part of this agreement, the tenant committed to providing the landlord with an annual income statement in order to remain in this subsidized rental unit. Economic rent for this rental unit was set at \$786.00 per month. The landlord testified that the tenant currently pays \$466.00 each month of the total economic rent.

The landlord entered into written evidence a copy of the 1 Month Notice. Although the 1 Month Notice identified August 10, 2015, as the effective date for the end of the tenancy, this automatically corrects to August 31, 2015, the earliest date possible for a 1 Month Notice issued on July 6, 2015. The landlord cited the following reason for the issuance of the Notice:

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

The landlord entered into written evidence copies of three written requests to the tenant to provide the landlord with information to confirm her 2014 income and to remain eligible for this subsidized housing unit. One of the landlord's representatives at this hearing confirmed that she deposited each of these written requests in the tenant's mailbox on April 22, 2015, May 19, 2015, and June 9, 2015. Each of these notices advised the tenant that her failure to submit the requested information in a timely manner would constitute a breach of her tenancy agreement. In the last of these notices, the landlord noted that this was a third and final request, and that "all tenants must submit proof of household income, **no later than Monday, June 15.**"

Despite these three notices, the landlord testified that the tenant did not provide any of the requested income information. She said that the landlord accepted payments from the tenant for "use and occupancy only" for the months of September and October. The landlord testified that the tenant has not made any payment for November 2015. The landlord requested an Order of Possession to take effect as soon as possible, as the landlord maintains that the tenant no longer qualifies for one of these subsidized rental units.

Analysis

The landlord issued the 1 Month Notice pursuant to paragraph 47(1)(h) of the *Act*, which reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if...:*

(h) the tenant

- (i) has failed to comply with a material term, and*
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;...*

The landlord has provided undisputed written evidence and sworn testimony that the tenant's failure to produce requested income information constituted a breach of a material term of this tenancy agreement. Based on the landlord's undisputed evidence and testimony, 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 receiving 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 corrected effective date of the notice, August 31, 2015. As that has not occurred and the tenant's last payment accepted for use and occupancy only enabled the tenant to remain in the rental unit only until October 31, 2015, I find that the landlord is entitled to a 2 day Order of Possession. 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 has been successful in this application, I order the landlord to recover the \$50.00 filing fee by retaining this amount from the tenant's security deposit. The value of the security deposit is hereby reduced from \$350.00 to \$300.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 recover the filing fee for this application. The current value of the tenant's security deposit is reduced from \$350.00 to \$300.00.

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: November 25, 2015

