



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, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an Order of Possession for Cause pursuant to section 55 and to recover the filing fee from the tenant for the cost of this application pursuant to section 72.

The tenant did not attend although the 11:30 a.m. teleconference hearing continued until 11:42 a.m. Two representatives (Landlord LD and Landlord AT) attended on behalf of the landlord. The landlord's representatives were given full opportunity to be heard, to present evidence and to make submissions. The landlord LD provided evidence that a 1 Month Notice to End Tenancy was served to the tenant by posting it on the rental unit door on July 6, 2015. She provided a completed proof of service document with the signature of Landlord AT as witness to the service.

The landlord LD gave sworn testimony that she served the tenant with the Application for Dispute Resolution hearing package by registered mail on September 24, 2015. She provided Canada Post receipts and tracking information. She testified that the mailing was returned and had not been picked up. She testified, providing receipts as proof, that she sent the registered mailing with Application for Dispute Resolution and evidence a second time. She testified that this mailing was also not picked up. Landlord AT testified that there is no evidence the tenant has vacated the rental unit. Based on all of the evidence provided, I accept that the tenant was deemed served with both the 1 Month Notice and the Application for Dispute Resolution hearing package in compliance with section 89 and 90 of the *Act* and in accordance with the Residential Tenancy Policy Guideline No. 12;

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Issue(s) to be Decided

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

Background and Evidence

Landlord LD gave evidence that the residential tenancy agreement for the premises began in August 1, 2013. The rental amount for this unit was established in the residential tenancy agreement at \$466.00. It was noted by Landlord LD in testimony that the rent is paid by a third party and that the third party pays only \$461.00 per month despite the terms of the residential tenancy agreement.

The landlord applied for an Order of Possession for Cause, particularly that the tenant had breached a material term of the tenancy agreement by failing to submit the subsidy application required annually or as required by the landlord. Landlord LD referred to the signed residential tenancy agreement to show that the tenant is required to produce the subsidy information and application upon request and not less than every 12 months.

The landlord issued a 1 Month Notice to End Tenancy. Both landlords testified that the tenant did not provide the subsidy information and application as required. Landlord AT testified that the tenant did not respond to phone calls ("the phone appears to be cut off"); knocking at the door; or the three letters provided to request that the tenant submit the subsidy application.

The landlord provided copies of three letters and testimony that those letters were delivered to the tenant's rental unit. The letters are dated; April 22, 2015; May 19, 2015; and June 9, 2015. The letters indicate, with details and offers of assistance that "it is time for the annual subsidy application and rent review." The letters requested proof of income and other financial documents. The letters indicated that, "This procedure is necessary in order for you to qualify for this housing. If you do not submit this information in a timely manner it is a breach of your tenancy agreement."

Analysis

The landlord's documentary evidence shows the tenant signed a residential tenancy agreement that requires she provide a subsidy application at least once every 12 months. The landlord's documentary evidence shows that the tenant has been provided with at least three written requests to provide this subsidy application. I accept the Landlord AT's testimony that the tenant has made no attempt to contact the landlord or to provide the subsidy application.

Based on the documentary evidence and testimony of both landlords, I find that this provision (requiring the submission of a subsidy application) is a material term of the tenancy agreement in that it relates directly to confirming the appropriateness of continued funding through a third

party for this residential tenancy. It is also required to allow the landlord to inform their decisions and submissions to larger agencies with respect to their subsidized rental units.

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 receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action in response to this 1 Month Notice within ten days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by August 31, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

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.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to 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.

I issue a monetary Order in favour of the landlords in the amount of \$50.00. The landlord is provided with formal Order in the above terms. Should the tenant fail to comply with this Order, this Order may be filed and enforced as Order of the Provincial Court of British Columbia.

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 27, 2015

Residential Tenancy Branch

