



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTHSTAR MOTOR MOTEL
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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0934 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package (including all evidence before me) on 17 December 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(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

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 April 2015. Monthly rent of \$450.00 is due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$225.00.

On 26 September 2015, the landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to the tenant. The 1 Month Notice was personally served to the tenant that day. The 1 Month Notice set out an effective date of 31 October 2015. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- the 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;
- the tenant has caused extraordinary damage to the unit; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time.

The basis for the 1 Month Notice is excessive combustible material the tenant is storing in the rental unit. I was provided with a photograph of the rental unit. The photograph shows a substantial pile of belongings in the rental unit. The agent testified that this photograph is representative of the rest of the rental unit. The landlord has been cautioned by the municipality that it faces fines if the room is not brought into compliance with fire safety codes.

The tenant has not filed an application for dispute resolution to cancel the 1 Month Notice.

Analysis

Subject to the presumption in subsection 47(5) of the Act, in an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in its 1 Month Notice, among other reasons, that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Pursuant to subsection 47(4) a tenant must dispute a notice given pursuant to section 47 within ten days from its receipt. In accordance with subsection 47(5), where a tenant fails to apply for dispute resolution within the ten-day period, that tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The tenant received the 1 Month Notice on 26 September 2015. This means that the tenant had until 6 October 2015 to apply to this Branch to cancel the 1 Month Notice. The tenant has not made an application to cancel the 1 Month Notice.

The landlord alleges that the tenant's clutter poses a safety and health hazard to the other occupants of the building. In particular, the landlord alleges that this material causes a fire hazard. The landlord has provided evidence to show that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. I am bound by the conclusive presumption set out in subsection 47(5) of the Act. As such, the tenant is presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice, 31 October 2015. As this date has now past, the landlord is entitled to an order of possession effective 29 February 2016.

As the landlord has been successful in this application, it is entitled to recover the filing fee from the tenant in the amount of \$50.00. Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant's security deposit in which case the value of the tenant's security deposit is reduced to \$175.00.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 29 February 2016. 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.

The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: February 03, 2016

Residential Tenancy Branch

