



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC KINSMEN 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 for cause and for a breach of a material term of the tenancy pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the notice of hearing package and the submitted documentary evidence was mailed to the dispute address by Canada Post Registered Mail on January 19, 2016. The landlord has provided the Canada Post Registered Mail Customer Receipt Tracking number as confirmation of service. The landlord stated that the package was returned by Canada Post as "unclaimed" after attempted service was made. I accept the undisputed affirmed testimony of the landlord and find pursuant to section 88 and 89 that the tenant was properly served with the notice of hearing package and the submitted documentary evidence and find that the tenant is deemed served 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

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

This tenancy began on September 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 10, 2015. The monthly rent is \$1,000.00 payable on the 1st day of each month and a security deposit of \$500.00 was paid on September 1, 2015.

On November 26, 2015, the landlord served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed 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.

The landlord stated that the 1 Month Notice dated November 26, 2015 was posted to the rental unit door with a witness. The landlord has submitted a copy of a proof of service document completed with witness confirming that the 1 Month Notice dated November 26, 2015 was posted to the rental unit door on November 26, 2015.

The landlord stated that the tenant has repeatedly prevented contractors from entering the rental premises to make repairs as per section 17 (c) of the signed tenancy agreement. The landlord stated that the tenant was verbally cautioned to stop interfering with the contractors. The landlord stated that on October 8, 2015 a letter was sent to the tenant cautioning the tenant about his behaviour in preventing workers from performing their tasks of renovations. The landlord stated that numerous complaints from the contractor were subsequently received. The landlord stated that a written complaint was received from the contractor detailing an occurrence on November 24, 2015 which led to the 1 Month Notice dated November 26, 2015. The letter states that written notices were handed out to all residents on November 23, 2015 to enter the rental premises to measure for window coverings. The contractor after knocking at 2 different times, entered the rental premises with the window covering company staff. The contractor went in first calling the tenant by name with no answer. As the window contracting staff were about to measure the windows, the tenant jumped up from below

the covers and chased us out. The landlord stated that the contractors refused to perform the renovation work with the tenant present.

Analysis

Section 47(1)(d)(i) 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 has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

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.

I accept the landlord's undisputed affirmed evidence that the 1 Month Notice dated November 26, 2015 was served to the tenant by posting it to the rental unit door with a witness.

The tenant failed to file an application for dispute of the notice within ten days of receiving the 1 Month Notice on November 26, 2015. The tenant has not made application pursuant to subsection 47(4) of the Act within ten days of receiving the 1 Month Notice. The landlord stated that she was not served with any applications filed for dispute over this tenancy. In accordance with subsection 47(5) of the Act, the tenant's failure to take either of these actions within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 31, 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order of \$100.00 for recovery of the 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: March 02, 2016

Residential Tenancy Branch

