



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction and Preliminary Matter

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein he sought an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on May 18, 2016 (the "Notice") and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant's advocate confirmed that the Tenant's legal name is not as recorded on the tenancy agreement and consequently on the Landlord's Application for Dispute Resolution. Pursuant to section 63 of the *Residential Tenancy Act* and Rule 8.4 of the *Residential Tenancy Rules of Procedure*, I amend the Landlord's Application for Dispute Resolution to note the Tenant's preferred and legal name.

Issues to be Decided

1. Is the Landlord entitled to an Order of possession?
2. Is the Landlord entitled to recovery the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated that this fixed term tenancy began on January 15, 2016. The term of the tenancy was for four years ending on January 15, 2020. Monthly rent was \$1,700.00 payable on the 15th of the month.

The Landlord issued the Notice on May 18, 2016 indicating the Tenant was repeatedly late paying rent.

Also introduced in evidence was a Proof of Service—Notice to End Tenancy confirming that the Landlord served the Notice by leaving a copy in the mailbox of the rental unit on May 18, 2016.. The Proof of Service indicated that the service was witnessed by M.Z.

The Landlord testified that to his knowledge the Tenant did not make an application to dispute the Notice.

The Tenant's Advocate confirmed that the Tenant received the Notice on May 18, 2016. He further confirmed the Tenant did not make an application to dispute the Notice.

Analysis

Section 47 of the *Residential Tenancy Act* allows a Landlord to end a tenancy for cause. The relevant portions of section 47

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(b) the tenant is repeatedly late paying rent;

...

(4) 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.

(5) 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.

The Tenant failed to dispute the Notice as required by section 47(4) and is conclusively presumed, under section 47(5) to accept the end of the tenancy.

The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

At the conclusion of the hearing, the parties reached the following settlement with respect to the effective date of the Order of Possession. Pursuant to section 63 of the *Act*, and Rule 8.4 of the *Residential Tenancy Branch Rules of Procedure* I record their settlement in this my Decision and resulting Orders. The terms of their settlement are as follows:

1. By no later than 2:00 p.m. on July 1, 2016 the Tenant shall pay to the Landlord the sum of \$1,800.00 representing the outstanding rent of \$1,700.00 in addition to the filing fee of \$100.00.
2. Should the Tenant make the \$1,800.00 payment as provided above, she may remain in the rental unit until 1:00 p.m. on July 14, 2016.
3. In furtherance of the above, the Landlord is granted an Order of Possession effective **1:00 p.m. on July 14, 2016**. This Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Supreme Court as an Order of that Court.
4. Should the Tenant fail to make the \$1,800.00 payment as provided in paragraph 1, the Landlord is granted an Order of Possession effective **two (2) days after service on the Tenant**. This Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Supreme Court as an Order of that Court.

Conclusion

The Tenant failed to apply to dispute the Notice and is therefore conclusively presumed to accept the end of the tenancy pursuant to section 47(5) of the *Residential Tenancy Act*.

The parties reached an agreement as to the effective date of the Notice which is set out in further detail in this my Decision.

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: June 30, 2016

Residential Tenancy Branch