



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB

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
- an Order of Possession for breach of agreement pursuant to section 55.

The tenant did not attend this hearing which lasted approximately 25 minutes. 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 testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), dated November 7, 2016 was served on the tenant personally on the same date. In accordance with sections 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on November 7, 2016.

The landlord testified that the landlord's application for dispute resolution dated January 4, 2017 was served on the tenant by registered mail sent on that same date. The landlord provided a Canada Post tracking number as evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application package on January 9, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause or breach of agreement?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in January, 2015. The current rent is \$650.00 payable on the 1st of the month. A security deposit of \$325.00 was paid by the tenant at the start of the

tenancy and still held by the landlord. The tenant continues to reside in the rental unit at the time of the hearing.

The landlord testified that the tenant has seriously jeopardized the health and safety of other occupants by smoking within and around the rental unit. The landlord testified that he has found smouldering cigarette butts discarded throughout the property and near wooden fences and trees. The landlord testified that the tenant's habit has caused the landlord's wife distress as she has respiratory issues which are exacerbated by second-hand smoke.

The landlord testified that the tenancy agreement prohibits smoking. The landlord submitted into evidence the written tenancy agreement signed by the parties which indicates as an additional term that there is to be no smoking. The landlord testified that the tenant has been smoking regularly since the tenancy started and has not curtailed the habit despite numerous discussions.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, December 31, 2016.

The landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the grounds for ending the tenancy and the effective date of the notice. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme 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: February 1, 2017

Residential Tenancy Branch