Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes   OPC, FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order of possession for cause; and
- recovery of the filing fee for their application from the tenant.

The landlord's agent (the "landlord") appeared at the teleconference hearing and gave affirmed testimony. The tenant did not appear at the hearing which lasted 12 minutes. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that tenant was served with a copy of the landlord's Application and Notice of Hearing by registered mail. The landlord testified that the registered mail was sent to the tenant's address on March 24, 2017. The landlord provided the Canada Post Customer Tracking Receipt with the Tracing Number to confirm the mailing. The landlord also provided a Canada Post printout which shows that the tenant signed for the registered mailing on March 28, 2017. Taking into account the undisputed testimony of the landlord and in accordance with section 89 the *Act*, I find that the tenant was duly served with a copy of the landlord's Application and Notice of Hearing on March 28, 2017, the date the tenant received the mailing.

Issues to be Decided

- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to recover the filing fee paid for this application from the tenant?

Background and Evidence

The evidence of the landlord established that a month to month tenancy started on October 1, 2010. Rent in the amount of $925.00 is due on the first day of each month. The landlord received a security deposit in the amount of $392.50 on September 8, 2010.

The landlord testified that a One Month Notice for Cause (the "One Month Notice") was posted to the tenant's door on February 17, 2017. The One Month Notice is dated February 17, 2017 and the effective date stated on the Notice is March 31, 2017.

The landlord testified that the One Month Notice was issued as a result of multiple noise complaints made against the tenant. The landlord testified that despite having sent the tenant caution letters, the situation did not improve. As a result the landlord issued the One Month Notice to end the tenancy on the basis that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord is seeking an order of possession and to recover the $100.00 filing fee paid for this application from the tenant.

The landlord testified that the tenant has paid rent for the month of April 2017 and therefore requested that the order of possession take effect on April 30, 2017 at 1:00 p.m.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the landlord's application and Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

In accordance with section 88 and 90 of the *Act*, I find that the tenant has been deemed served with the One Month Notice on February 20, 2017, the third day after it was posted on the tenant's door. I also find that the One Month Notice complies with section 52 of the *Act* and that it is valid.

Section 47 of the *Act* stipulates that a tenant has ten days from the date of receiving the Notice ending tenancy to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant filed an application to dispute the Notice.

Based on the foregoing, 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 on the One Month Notice,

March 31, 2017. Therefore, I find that the landlord is entitled to an order of possession. The order of possession will take effect at 1:00 p.m. on April 30, 2017 as requested by the landlord.

As the landlord's application was successful, I also find that the landlord is entitled to recovery of the $100.00 filing fee paid for their application from the tenant. Pursuant to section 72 of the *Act*, I authorize the landlord to apply the tenant's security deposit in the amount of $392.50 against the amounts owed by the tenant. Accordingly, the landlord is entitled to retain $100.00 from the tenant's security deposit being held by the landlord.

Conclusion

The landlord's application is successful and the tenancy will end.

The landlord is awarded $100.00 for the filing fee for their application from the tenant. The landlord is authorized to retain $100.00 from the tenant's security deposit being held by the landlord as payment for the amounts owed by the tenant.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective April 30, 2017 at 1:00 p.m. which must be served on the tenant. Should the tenant 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 final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 28, 2017

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Residential Tenancy Branch