



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNSD 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;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

While the landlord's agent, KO, attended the hearing by way of conference call, the tenant did not. I waited until 9:43 a.m. to enable the tenant to participate in this hearing scheduled for 9:30 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord's agent gave sworn testimony that on March 13, 2017 a copy of the Application for Dispute Resolution hearing package as well as the evidentiary package was served on the tenant by way of Registered Mail. A Canada Post tracking number was provided to the hearing to confirm this registered mailing. Pursuant to sections 88, 89 and 90 of the *Act*, the tenant was deemed served with the dispute resolution hearing package on March 18, 2017.

The landlord's agent provided undisputed testimony that the tenant was served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice'), with an effective date of January 31, 2017, on December 29, 2016, by personally serving the 1 Month Notice on the tenant. The landlord entered into written evidence a copy of that Notice as well as their Proof of Service confirming that the Notice was served at 3:00 p.m. on December 29, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on December 29, 2016.

Issues 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?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of their monetary claim?

Background and Evidence

The landlord's agent provided undisputed testimony that this month to month tenancy began in November 2009. The current rental amount is \$843.00 due on the first of each month. The landlord currently holds a security deposit in the amount of \$365.00, and the tenant continues to reside in the rental unit.

The landlord submitted the notice to end tenancy providing two grounds:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
2. The tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord's agent testified that on December 28, 2016 at 5:30 a.m. the fire department was called by another occupant in the apartment building to report smoke and fire coming from the tenant's suite. The fire department attended to discover that the tenant had put a box of crackers in the oven, which started a fire and destroyed the oven. The landlord submitted a copy of the fire department's incident report in their evidence. The report stated that "the tenant was not co-operative and would not leave the area outside his door. He was asked nicely and respectfully many times and finally with the threat of police was coerced to move out of harms way. Police were called to the scene to deal with the tenant".

The landlord's agent testified that this was the second incident. In September 2016 a similar incident occurred, but the building manager smelled the smoke and managed to turn off the stove before a fire had started.

The landlord expressed concern in the hearing that the tenant, has, and continues to jeopardize the safety of all occupants in the building. The tenant had destroyed the oven, and put the entire building at significant risk. The landlord issued warning letters to the tenant in March and August of 2016 regarding the clutter in the tenant's suite. The landlord submitted photos of the suite, as well of the stove that was destroyed by the fire in December of 2016.

The landlord is seeking an Order of Possession for Cause, as well as recovery of the filing fee for this application. The landlord clarified that they had applied to retain the tenant's security deposit in satisfaction of their monetary claim to recover the filing fee.

Analysis

Based on the undisputed testimony of the landlord, I find that the tenant was served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten 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 his application for dispute resolution within the ten 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, January 31, 2017.

In this case, this required the tenant and anyone on the premises to vacate the premises by January 31, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

As the landlord was successful in their application, I also allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$365.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in the amount of \$100.00 in satisfaction of the monetary claim.

Conclusion

I find that the landlord's 1 Month Notice is valid and effective as of January 31, 2017. I grant an Order of Possession to the landlord effective two **days after service of this Order** 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.

I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary claim.

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: April 18, 2017

Residential Tenancy Branch