



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel who primarily spoke on behalf of the landlord (the "landlord").

Preliminary Issue – Service and Adjournment

The landlord testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), dated February 10, 2017 was served on the tenant by registered mail sent on February 14, 2017. The landlord provided a Canada Post tracking number as evidence. The tenant testified that he never received the 1 Month Notice.

The landlord testified that the landlord's application for dispute resolution dated March 6, 2017 was served on the tenant by registered mail on March 9, 2017. The landlord provided a Canada Post tracking number as evidence of service. The tenant testified that he never received the landlord's application.

The tenant testified that he only became aware of the present application when he attended at the Residential Tenancy Branch to file a separate application. He said that he has not received either the 1 Month Notice or the landlord's application. The tenant said that he did not receive any notification from Canada Post that the registered mail packages were available for pickup at the post office. The tenant verbally confirmed his

mailing address and could give no explanation as to why the registered mail was not delivered.

I find that the landlord has complied with the *Act* by serving the documents in a manner prescribed by the legislation to a mailing address which the tenant confirmed is the address for delivery. Therefore, 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 February 19, 2017, five days after mailing. Furthermore, I find that the tenant was deemed served with the landlord's application for dispute resolution in accordance with sections 89 and 90 of the *Act* on March 14, 2017, five days after mailing.

The tenant requested an adjournment of the hearing so that the landlord could provide him with the 1 Month Notice and application for dispute resolution. The landlord did not consent to an adjournment and requested the application be heard.

After considering Rule 7.9 of the Rules of Procedure I find that an adjournment would unjustly prejudice the landlord as I am satisfied that the tenant was deemed served with the 1 Month Notice and application in accordance with the *Act*. Consequently, I decline to adjourn this hearing.

Issue(s) 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 from the tenant?

Background and Evidence

The landlord provided the following evidence. This tenancy began in May, 2013. The current monthly rent is \$700.00 payable on the first of each month. The rental unit is located in the basement of the landlord's family home. The landlord lives upstairs with her family. The landlord testified that the tenant has been repeatedly late in paying the monthly rent. The landlord submitted into written evidence receipts issued when the tenant has made rent payment dated November 2, 2016, December 5, 2016, and two payments on February 2, 2017. The tenant testified that he is able to make timely rent payments but it is the responsibility of the landlord to attend at the rental unit and collect the rent.

Analysis

I am satisfied that the form and content of the landlord's 1 Month Notice complies with section 52 of the *Act*. As I am satisfied that the 1 Month Notice was served in accordance with section 88 of the *Act* and I find that the tenant has not filed a dispute of the notice within the 10 days of deemed service, pursuant to section 47(5)(a) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, March 31, 2017.

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.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

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.

I issue a monetary Order in the landlord's favour in the amount of \$100.00.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 10, 2017

Residential Tenancy Branch