



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for Cause, pursuant to section 47 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Landlord, E.K., ("landlord") and the tenant appeared at the hearing. The tenant signed into the hearing at 9:39 A.M. No explanation was provided for her late arrival. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord gave undisputed affirmed testimony that a 1 Month Notice for Cause was handed to the tenant on March 7, 2017. Pursuant to section 88 of the *Act* the tenant is found to have been served on that day.

On March 22, 2017 the landlords sent the tenant their application for dispute resolution and evidentiary package by way of Registered Mail. The tenant acknowledged receipt of this package and pursuant to sections 88 and 89 of the *Act* the tenant is found to have been served with these documents.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

Testimony was provided by the tenant and a copy of the residential tenancy agreement was submitted to the hearing by the landlords demonstrating that the tenancy began on

December 4, 2016. Rent was set at \$1,250.00 per month and a security deposit of \$625.00 continues to be held by the landlords.

The landlord explained that he issued the 1 Month Notice with an effective date of April 30, 2017, for the following two reasons. The first ground cited by the landlord was that the tenant was repeatedly late paying her rent. The second ground cited by the landlord was that the tenant had seriously jeopardized the health or safety or lawful right of another occupant and had put the landlords' property at significant risk.

The landlord explained that rent was paid late three times in 2017.

Specifically –

- Rent for January 2017 was paid in 2 installments. The first being on January 5, 2017 for \$900.00 and the second being on January 6, 2017 for \$230.00.
- Rent for February 2017 was paid in 2 installments. The first being on February 4, 2017 for \$598.00 and the second being on February 5, 2017 for \$653.00.
- Rent for March 2017 was paid in full but was paid on March 3, 2017.

The landlord stated that he issued two receipts for rent by way of an email receipt for January and February 2017 and a physical receipt was issued for March 2017 rent.

The tenant acknowledged that rent had been paid late on these occasions. She explained that rent for January 2017 was late because she was unable to locate the banking information of the landlord for this month. The tenant did not offer any reason why rent for February and March 2017 were late.

The landlord testified that he also sought an Order of Possession based on the tenant's past actions. He stated that the tenant had put the landlords' property at significant risk and had seriously jeopardized the health or safety or lawful right of another occupant on numerous occasions. The landlord detailed these transgressions, stating:

- On several occasions he has noticed the apartment door to be wide open and ajar, enabling anyone passing by to enter the unit;
- In February 2017 while repairs were being made to the hot water tank, multiple clothes were found to be piled up next to the water heater creating a fire hazard. This incident was documented in the form of a hand written note by the repairperson who wrote, "Remove clothing from around water heater. It is a fire hazard."

- In February 2017 boxes were found on the back stairs with a tarp over top of them. These were deemed to be a tripping hazard by the landlords. The landlord acknowledged that they were removed by the tenant when she was informed of this danger.
- Boxes were piled in front of her front door.
- An incident of smoking in the rental unit occurred on an unspecified date. A warning letter was issued to the tenant on May 9, 2017.

The tenant explained that she was completely unaware that any of her actions were deemed dangerous by the landlords. She stated that she had no idea the landlords had any concerns surrounding any of the perceived dangerous activities associated with her apartment. She continued by noting that she has had no warnings or conversations with the landlords about any issues identified during the hearing by the landlord. The tenant acknowledged that during the “first few weeks” of April 2017 the landlords had slid under her apartment door an invoice from a heating service company that included a note saying, “Remove clothing rom around water heater. It is a fire hazard.”

Analysis

Section 47(1)(b) provides a landlord grounds for ending a tenancy when a tenant is repeatedly late paying rent. *Residential Tenancy Policy Guideline #38* notes that “three late payments are the minimum number sufficient to justify a notice under these provisions...it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments...whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

The tenant acknowledged not paying rent on time in January, February and March 2017. She offered no evidence that any unforeseeable errors had caused the late payments. The sole explanation offered by the tenant was that she was unable to locate the bank information of the landlords. While I appreciate that this may have been a difficult obstacle, it is not an unforeseeable error.

In addition to the above described repeated late payments of rent, the tenant has taken no steps to cancel the landlords’ notice to end tenancy. Section 47(5) of the *Act* states; “if a tenant who has received a notice under this section does not make an application for dispute resolution...*the tenant is conclusively presumed to have accepted that the*

tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.”

Because the tenant has repeatedly paid late rent in contravention of section 47(1)(b) of the *Act* and has not disputed the landlords’ application for an Order of Possession pursuant to section 47(5) of the *Act*, the landlords are found to have been successful in their application for an Order of Possession.

The landlords will be issued an Order of Possession effective at 1:00 P.M. on April 30, 2017, the effective date of the 1 Month Notice.

As the landlords were successful in their application, they may recover the \$100.00 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlords to withhold \$100.00 from the tenant’s security deposit in satisfaction of this award.

Conclusion

I issue an Order of Possession to the landlords, which is to take effect by 1:00 p.m. on April 30, 2017. The landlords are provided with this Order in the above terms and the tenant must be served with this Order. 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.

The landlords may retain \$100.00 from the tenant's security deposit.

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 25, 2017

Residential Tenancy Branch