



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WANKE DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an Order for Possession based on a 1 Month Notice to End Tenancy for Cause issued October 17, 2016 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference on May 8, 2017. Only the Landlord's agent, E.W., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

A review of the tenancy agreement confirms the Tenant is T.F. Accordingly, I amend the Landlord's Application for Dispute Resolution to remove B.F. as a Tenant.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing and the Application on April 7, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of April 12, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the Residential Tenancy Agreement between the Landlord and the Tenant, T.F. which indicated this tenancy began October 15, 2010. The monthly rent at the time was \$500.00 and the Tenant paid a \$250.00 security deposit.

The reasons cited on the Notice are as follows:

- the Tenant is repeatedly late paying rent; and,
- the rental unit/site must be vacated to comply with a government order.

The Landlord's agent stated that she previously applied for an Order of Possession based on the Notice, and a hearing date was set for early January 2017 although she was unable to attend as a result of a delayed flight.

A review of Branch records confirms that the hearing occurred on January 20, 2017 and as no one attended, the presiding Arbitrator dismissed the Landlord's application with leave to reapply.

On March 30, 2017 the Landlord reapplied for an Order of Possession based on the Notice.

The Landlord's agent stated that she has spoken to the Tenants for many years about the condition of the rental unit and the Landlord's expectation that the property be cleaned up. A document submitted by the Landlord provides a timeline and indicates that as early as November 2015 the Landlord made specific requests of the Tenant with respect to cleaning up the property.

The Landlord also provided copies of numerous letters from the municipality in which the rental unit is located. In the communication the municipality informs the Landlord that the Tenant is operating a garage/repair shop on the property contrary to local bylaws. The municipality further informs the Landlord that failure to comply will result in ticketing (possibly on a daily basis) and legal action.

The evidence confirms that each time the Landlord's agent has received communication from the municipality, she has informed the Tenant that he must discontinue their car repair business and clean up the property.

The Landlord's agent also stated that all of the neighbours are complaining to the municipality.

The Landlord's agent stated that despite numerous warnings, the Tenant has failed to discontinue the car repair business or correct the problems with the condition of the rental property.

Analysis and Conclusion

Based on the Landlords' undisputed evidence and testimony of the Landlord's agent, and on a balance of probabilities, I find as follows.

The Landlord issued a Notice to End Tenancy pursuant to section 47 of the *Residential Tenancy Act*. The Notice informed the Tenant he had 10 days in which to dispute the Notice, failing which the tenancy would end. The Tenant failed to dispute the Notice. The Tenant is presumed under section 47 of the *Residential Tenancy Act*, to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. For greater clarity I reproduce that section as follows:

s. 47 ...

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

I am unable to find that the Landlord reinstated the tenancy following the issuance of the Notice and accept the Landlord's agent's testimony that she has repeatedly informed the Tenant that she wishes to end the tenancy.

The Landlord is granted an Order of Possession effective **two (2) days after service on the Tenant**. The Landlord must serve the Order on the Tenant. Should the Tenant fail to vacate the rental unit as ordered, the Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

The Landlord is also entitled to recovery of the \$100.00 filing fee and is hereby authorized to retain this sum from the Tenant's security deposit.

This decision is final and binding on the parties, except as 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: May 12, 2017

Residential Tenancy Branch