



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding H.E. ROOMS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

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 *Ac*.

While the landlord, represented by agent, D.F. (the "landlord"), attended the hearing by way of a conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was posted on the rental unit door on March 17, 2017. I find that in accordance with sections 88 and 90 of the *Act* the 1 Month Notice was deemed served to the tenant on March 20, 2017.

The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") and evidentiary package by way of posting it on the rental unit door on April 12, 2017. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package and evidentiary package on April 15, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

The landlord gave evidence that the tenant has occupied the rental unit for approximately six years without a tenancy agreement. In 2015 the building was sold but no tenancy agreement was entered into between the tenant and the landlord. This was a month to month tenancy, and rent was set at \$465.00 per month. A security deposit of \$232.50 was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord has applied to end the tenancy for cause. The landlord testified that the tenant has changed the locks to the rental unit without the permission of the landlord. Additionally, the tenant has caused extraordinary damage to the door and door frame of the rental unit.

Photographic evidence was submitted to the hearing, documenting the new locks that have been affixed to the door of the rental unit.

The landlord has applied for an Order of Possession based on a 1 Month Notice deemed to have been issued to the tenant on March 20, 2017. The corrected effective date of this 1 Month Notice is therefore, April 30, 2017.

Analysis

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 an 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, April 30, 2017.

No evidence was presented at the hearing as to whether the tenant has paid rent for May 2017. The landlord will therefore be granted an Order of Possession for 1:00 P.M. on May 31, 2017.

As the landlord was successful in this application, the landlord may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I am granting the landlord an Order of Possession to be effective at 1:00 P.M. on May 31, 2017. The landlord is provided with formal Orders in the above terms. 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.

In lieu of a Monetary Order in the landlord's favour in the amount of \$100.00, the landlord 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: May 16, 2017

Residential Tenancy Branch