



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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on May 19, 2017. Both parties also confirmed that the landlord served the tenant with the amended application for dispute resolution by posting it to the rental unit door on June 14, 2017. The tenant confirmed that no documentary evidence was submitted. Neither party raised any issues regarding service. As both parties have attended and that the notice of hearing package and the amended application for dispute was served by the landlord as claimed, that I find that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

On June 14, 2017, the landlord served the tenant with an amended 1 Month Notice dated May 5, 2017. The 1 Month Notice sets out an effective end of tenancy date of August 7, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The notice also provides written details which state,

S.G. assaulted me on May 2 The second when I went to pick up my rent cheque. He put his foot on my foot and tried to punch me. He apologized to police officer for his actions. Police notified. [Reproduced as written]

The landlord clarified by providing both written details in his amended application and his direct testimony that a 1 Month Notice dated May 5, 2017 was originally served to the tenant on May 5, 2017 by posting it to the rental unit door. The landlord clarified that in this notice the landlord failed to provide an effective end of tenancy date. The landlord amended the 1 Month Notice dated May 5, 2017 by adding an effective end of tenancy date of August 7, 2017 and re-served it to the tenant on June 14, 2017 by posting it to the rental unit door with a witness. The tenant disputed that he was not served with the amended 1 Month Notice. The landlord has provided in support of this claim a completed proof of service document which confirms that the amended 1 Month Notice was served with a witness on June 14, 2017 by posting it to the rental unit door.

The landlord claims that the tenant has been repeatedly late paying rent on the following days.

October 14, 2016
January 2, 2017
April 3, 2017
May 2, 2017

In support of this claim the landlord has provided copies of rental receipts dated and issued:

October 14, 2016
January 2, 2017

May 2, 2017

The landlord clarified that two of the receipts were signed in receipt by the tenant and his spouse.

The tenant disputes this claim, but confirmed that he was late paying rent on October 14, 2016 and January 2, 2017. The landlord was unable to provide any further details of the late rent payments for April 3, 2017 and May 2, 2017.

The landlord also claims that on May 2, 2017 the tenant assaulted him as provided in the written details of the 1 Month Notice noted above. The tenant disputes that he did not assault the landlord. The landlord relies upon a business card from the RCMP as proof that the tenant assaulted him. The landlord was also unable to connect via telephone with his witness, the police officer. The landlord claimed that the tenant had admitted to the police officer that he had assaulted the landlord and has since apologized to the landlord via the police officer. The tenant disputes this claim.

The landlord seeks an order of possession as a result of the 1 Month Notice and recovery of the filing fee.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Although the tenant disputed that no service was made, the landlord has provided a completed proof of service document confirming service on this date in this manner. I find that I prefer the evidence of the landlord over that of the tenant regarding the service of the amended 1 Month Notice dated May 5, 2017 with an effective end of tenancy date of August 7, 2017.

Section 47(5) of the Residential Tenancy Branch states in part that if a tenant has received a notice under this section and does not make an application for dispute resolution is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit on that date. As such, I find that as the tenant was deemed properly served with the 1 Month Notice dated May 5, 2017 with an effective end of tenancy date of August 7, 2017 that the tenant failed to file an application in dispute of this notice. As such, the tenant is conclusively presumed to have accepted that the tenancy is at an end.

The landlord's application for an order of possession based upon the 1 Month Notice dated May 5, 2017 with an effective end of tenancy date of August 7, 2017 is granted.

The landlord having been successful is granted a monetary order for \$100.00 for recovery of the filing fee.

Conclusion

The landlord is granted an order of possession effective on August 7, 2017.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as an order of those Courts.

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: July 05, 2017

Residential Tenancy Branch