



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened to deal with an application under the *Residential Tenancy Act* (the “Act”) based on a 1 Month Notice to End Tenancy for Cause dated May 31, 2017 (the “1 Month Notice”). The landlord’s application, filed July 5, 2017, is for an order of possession based on the 1 Month Notice, a monetary order for unpaid rent, and recovery of the application filing fee.

A property manager (PW) and a director of the corporate landlord (EM) attended at the hearing on behalf of the landlord and had a full opportunity to be heard, to give affirmed testimony and submit documentary evidence.

As the tenant did not attend the hearing, service of the landlord’s application and notice of hearing was considered. PW testified that she sent these materials to the rental unit address by registered mail on July 6, 2017 and that she understands that they were picked up. A copy of the registered mail receipt was in evidence. I find that the tenant was duly served on July 11, five days after they were sent by registered mail, in accordance with s. 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 1 Month Notice?

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover the application filing fee from the tenant?

Background and Evidence

The tenancy agreement was not in evidence. However, the landlord's representatives testified that this tenancy began August 1, 2015. It is a month to month tenancy. Rent of \$800.00 is due on the first of the month. A security deposit of \$390.00 was paid at the start of the tenancy and remains in the landlord's possession.

PW testified that she that she served the tenant with the 1 Month Notice by posting it on the door of the rental unit on May 31, 2017. A Proof of Service document signed by a third party witness was in evidence in support.

The tenant has not applied to dispute the 1 Month Notice.

The landlord's representatives also testified that the tenant currently owes \$1,905.00 in unpaid rent, including for the month of August. The landlord had included a handwritten accounting ledger in evidence suggesting that as of July of this year the tenant owed \$1,835.00.

Analysis

Section 47 of the Act allows a landlord to end a month to month tenancy for cause by giving notice effective on a date not earlier than 1 month after the date the tenant receives the notice, and the day before the day in the month that rent is payable.

Section 47(4) allows a tenant to apply to dispute such a notice within 10 days of receipt. The tenant has not applied to dispute the 1 Month Notice.

Section 47(5) of the Act provides that if a tenant does not apply to dispute the 1 Month Notice within 10 days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice.

Section 90 of the Act deems a document to have been served three days after the date of posting. As it was posted on May 31, I find that the tenant was served with the 1 Month Notice on June 3. Accordingly, I find that this tenancy ended on July 31, 2017, the corrected effective date of the 1 Month Notice.

Section 55(2)(b) of the Act requires that I grant an order of possession in these circumstances. I find that the 1 Month Notice complies with s. 52. Because the tenant

is in arrears, I grant the landlord an order of possession effective 2 (two) days from the date of service.

Sections 7(1) and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

PW has testified that the tenant owes \$1,905.00 in unpaid rent, inclusive of the month of August. By my calculations this is less than the amount shown as outstanding on the landlord's ledger, plus unpaid rent for August. However, I accept the landlord's testimony that the tenant owes \$1,905.00 only, and I find that the landlord is entitled to this amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenants' security deposit of \$390.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord's application is allowed.

I grant an order of possession to the landlord effective two (2) days from the date of service. This order must be served on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent/loss of rental income	\$1,905.00
Filing Fee	\$100.00
Less Security Deposit	-\$390.00
Total Monetary Order	\$1,615.00

I issue a monetary order in the landlord's favour in the amount of **1,615.00**. The tenant must also be served with this order. Should the tenant fail to comply with this order, it 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 s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: August 21, 2017

Residential Tenancy Branch