



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for an Order of Possession and recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that the Application, the Notice of Hearing, and the evidence package were posted to the door of Tenant’s rental unit on September 5, 2017, and that a copy was also sent to the Tenant by registered mail on September 11, 2017. A copy of the registered mail receipt was submitted by the Agent for consideration. As a result, I find that the Tenant was deemed served on September 8, 2017, three days after it was posted to the door of their rental unit. In addition, I also find that the Tenant was deemed served on September 16, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing the Agent testified that there was a clerical error on the Application as the street number is missing from the dispute address. The Agent testified that the Tenant's name and the correct unit and street name are shown on the Application and that the correct and full street address is shown on the One Month Notice to End Tenancy for Cause (the "One Month Notice"), which was served on the Tenant. The Agent testified that in addition to this, the Application, the Notice of Hearing, and the evidence package were also posted to the door of Tenant's rental unit. As a result, the Agent argued that the Tenant ought to have known the Application was in relation to their unit.

Based on the testimony of the Agent and the documentary evidence before me, I am satisfied that the Tenant knew, or ought to have known, that the Application related to them and their rental unit and therefore the hearing proceeded as scheduled.

On October 12, 2017, the Branch received an Amendment to an Application for Dispute Resolution (the "Amendment") filed by the Agent, and a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"). The Amendment stated that a 10 Day Notice had been served on the Tenant and that the Agent wished to amend their Application to include a Monetary Order in the amount of \$2,100.00 for outstanding rent in relation to the 10 day Notice. The Agent testified that the Amendment was personally served on an adult who apparently resides with the Tenant on October 12, 2017.

Rule 4.6 of the Rules of Procedure states that a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Based on the above, I find that the Amendment was not served on the Respondent in accordance with rule 4.6 of the Rules of Procedure and therefore it is not properly before me for consideration. The Landlord remains at liberty to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for the recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement submitted by the Agent indicates that the month-to-month tenancy began November 15, 2015, and that rent in the amount of \$850.00 is due on the 15th day of each month.

The Agent testified that a One Month Notice to End Tenancy for Cause (the “One Month Notice”) was personally served on the Tenant on June 30, 2017. The One Month Notice submitted by the Agent is dated June 30, 2017, and has an effective vacancy date of July 31, 2017. The One Month Notice lists the following reasons for ending the tenancy:

- The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has or is likely to damage to the landlord's property;
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; and
- The tenant has not done required repairs of damage to the rental unit or other residential property;

The One Month Notice also states that the tenant has the right to dispute the notice by filing an Application within 10 days of receipt of the notice, and that failure to dispute the notice during this period will result in a conclusive presumption that the tenant has accepted that the tenancy will end in accordance with the notice.

Analysis

Section 47 of the *Act* states the following with regards to a Notice to End Tenancy for cause:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32
- (3) *[obligations to repair and maintain]*, within a reasonable

Section 47 of the *Act* also states:

- (2) A notice under this section must end the tenancy effective on a date that is
 - (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (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 have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the One Month Notice on June 30, 2017.

As there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within that 10 day period granted under section 47(4) of the *Act* and I therefore find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on August 14, 2017, the corrected effective date of the One Month Notice.

As a result, I find that the Landlord is entitled to an Order of Possession. As the effective date of the One Month Notice has passed, the Order of Possession is effective two days after service on the Tenant.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to a Monetary Order in the amount of **\$100.00** for the recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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.

Pursuant to sections 67 and 72 of the *Act*, I also grant the Landlord a Monetary Order in the amount of \$100.00.

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: October 20, 2017

Residential Tenancy Branch