



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYPRESS GARDEN APTS.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FF O
For the tenant: OLC RR FF O

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession based on a 1 Month Notice to End Tenancy for Cause dated August 28, 2017 (the “1 Month Notice”), to recover the cost of the filing fee and other unspecified relief. The tenant for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for a rent reduction, for the recovery of the cost of the filing fee, and other unspecified relief.

Two agents for the landlord company and an articling student representing the landlord attended the teleconference hearing. The hearing process was explained to those in attendance and an opportunity was given to ask questions about the hearing process. Thereafter the agents gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord submitted in evidence that the tenant was personally served by landlord agent D.M.V on September 13, 2017 at approximately 5:07 p.m. with the hearing package, which was witnessed by landlord agent D.V. Based on the undisputed evidence before me and the fact that the

tenant also made an application and did not attend the hearing to present the merits of his application, I find the tenant was duly served under the *Act*.

After the 10 minute waiting period, the tenant's application was **dismissed in full without leave to reapply** as the respondents attended the hearing and were ready to proceed; and the applicant tenant failed to attend the hearing to present the merits of his application.

As a result of the above, the hearing continued with the landlord's application only.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2017. The landlord is not certain if the tenant has vacated the rental unit and as a result, is seeking an order of possession. The agents confirmed that the tenant has not returned the rental unit keys.

Regarding the 1 Month Notice, the agents confirmed that the 1 Month Notice was served on an adult woman who was apparently residing with the tenant on August 28, 2017 and the 1 Month Notice was also dated August 28, 2017. The effective vacancy date listed on the 1 Month Notice is September 30, 2017 which has passed. The tenant did not file an application to dispute the 1 Month Notice.

The agents confirmed that the tenant has not paid any money for use and occupancy for October or November of 2017.

Analysis

Based on the testimony of the agents and the documentary evidence before me, and on the balance of probabilities, I find the following.

1 Month Notice – Pursuant to section 47 of the *Act*, if the tenant does not dispute the 1 Month Notice within 10 days of being served, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date listed on the 1

Month Notice which was September 30, 2017. As the tenant did not dispute the 1 Month Notice I find the tenant is conclusively presumed under section 47 of the *Act* to have accepted the end of tenancy date of September 30, 2017 and has been overholding the rental unit as a result. As a result of the above and pursuant to section 47 and 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit beyond the effective date and the agents testified that the tenant has not paid for use and occupancy for October or November of 2017. I find the tenancy ended on September 30, 2017 which was the effective vacancy date listed on the undisputed 1 Month Notice.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee. I authorize the landlord to retain **\$100.00** from the tenant's \$510.00 security deposit, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. I find that the tenant's security deposit balance is now **\$410.00** as a result of the above.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

The landlord's application is successful. The tenancy ended on September 30, 2017. The landlord has been granted an order of possession effective two (2) days after service on the tenant. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

This decision is final and binding on the parties, unless 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: November 8, 2017

Residential Tenancy Branch