



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AVALON & SILVER HOTEL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

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

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 and Notice of Hearing were personally served on the Tenant on October 3, 2017. As a result, I find that the Tenant was served on October 3, 2017, the date the documents were personally served on them.

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

The Agent requested that the Application be amended to include the retention of the security deposit paid by the Tenant either in part or in full, to offset any Monetary Orders issued in favor of the Landlord. The Application was amended accordingly.

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 monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The Agent testified that the tenancy began August 18, 2017, and that rent in the amount of \$440.00 is due on the first day of each month. The Agent also testified that a security deposit in the amount of \$220.00 was paid by the Tenant, which the Landlord still holds.

The Agent testified that a One Month Notice to End Tenancy for Cause (the “One Month notice”) was served on the Tenant on August 30, 2017, by posting a copy to the door of the Tenant’s rental unit. A copy of the One Month Notice was also submitted for my consideration. The One Month Notice, Dated August 30, 2017, has an effective vacancy date of September 30, 2017, and states that the reason for ending the tenancy is because:

- 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 of the residential property, and
- the Tenant or a person permitted on the residential property by the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant.

Analysis

Section 47 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,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

(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]*.

Section 47 also states the following:

47 (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 sections 88 and 89 of the *Act*, I find that the Tenant was deemed served with the One Month Notice on September 2, 2017, three days after it was posted to the door of their rental unit.

Section 53 states the following with regards to effective dates:

Incorrect effective dates automatically changed

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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

(a) that complies with the required notice period, or

(b) if the landlord gives a longer notice period, that complies with that longer notice period.

Based on the above, the deemed service date of September 2, 2017, and in consideration of the Agent's testimony that rent is due on the first day of each month, I find that the effective date of One Month Notice, September 30, 2017, is incorrect, and that it is automatically corrected under section 53 of the *Act* to October 31, 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 the corrected effective date of the One Month Notice, October 31, 2017.

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 retain from the security deposit paid by the Tenant, \$100.00 for the recovery of the filing fee. The balance of the security deposit is to be dealt with in accordance with the *Act*.

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*, the Landlord is entitled to retain from the security deposit paid by the Tenant, the amount of \$100.00 for the recovery of the filing fee.

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*. At the request of the Agent, copies of the decision and Order will be sent via e-mail at the addresses provided in the hearing.

Dated: November 3, 2017

Residential Tenancy Branch