



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, OPC, FFL

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;
- an Order of Possession on the basis of the tenant's failure to abide by the terms of a mutual agreement to end tenancy which she signed, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 10:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that she handed the tenant the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on June 27, 2017. I am satisfied that the tenant was served with the 1 Month Notice on that date in accordance with section 88 of the *Act*.

As the landlord entered into written evidence a copy of the Mutual Agreement to End Tenancy (the Mutual Agreement) signed by both the tenant and the landlord, I am satisfied that the tenant had a copy of the July 20, 2017 Mutual Agreement as of that date.

The landlord testified that she handed the tenant a copy of the landlord's dispute resolution hearing and written evidence packages on November 2, 2017. She also said that she sent the tenant a copy of these documents by registered mail on November 2,

2017, providing a copy of the Canada Post Tracking Number to confirm that mailing. I find that the tenant was served with the dispute resolution hearing and written evidence packages on November 2, 2017 in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause or on the basis of the tenant's failure to vacate the rental unit after signing a mutual agreement to end tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy for a suite in a rental building commenced on September 15, 2003. Monthly rent, initially set at \$750.00 per month, has now increased to \$984.37, payable in advance on the first of each month. The landlord continues to hold the tenant's \$50.00 security deposit paid when this tenancy began.

The landlord entered into written evidence a copy of the 1 Month Notice, which required the tenant to end this tenancy by July 31, 2017, for the following reasons:

Tenant or a person permitted on the property by the tenant has:...

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk...*

The landlord provided written and photographic evidence, supported by sworn testimony at the hearing, that the landlord has been trying to encourage the tenant to remove excessive possessions from her rental unit for over a year, to little avail. She entered into written evidence a series of inspection requests and warning letters from July 12, 2016 to May 26, 2017 to document concerns about the tenant's housekeeping that the landlord maintained compromised the health and safety of others in this rental building.

The landlord testified that the parties subsequently signed the Mutual Agreement on July 20, 2017, in which the tenant agreed to end her tenancy by September 30, 2017.

Although the tenant has been working with representatives of her local MLA's Office, the local health agency, and other tenants in this building, the landlord maintained that

insufficient meaningful progress has been made by the tenant in decluttering her rental unit.

The landlord entered into written evidence and sworn testimony that she has accepted payments of \$984.37 for each of October and November 2017 for “use and occupancy only” and not to reinstate this tenancy.

Analysis

Based on undisputed testimony of the landlord, I find that the tenant was served with the 1 Month Notice, which complies with the form and content provisions of section 52 of the *Act*. Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. There is no evidence before me that the tenant has filed an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, July 31, 2017.

Subsequent to sending the 1 Month Notice, the landlord and the tenant entered into the Mutual Agreement, which extended the effective date of the landlord’s entitlement to possession of the rental unit from July 31, 2017 until September 30, 2017. As the tenant has not complied with her signed agreement to end this tenancy by September 30, 2017, I find that the landlord is entitled to an Order of Possession pursuant to paragraphs 44(1)(c) and 55(2)(d) of the *Act* to take effect by 1:00 p.m. on November 30, 2017. The tenant is entitled to remain in the rental unit until that date because the landlord has accepted her payments of \$984.37 for use and occupancy of the rental unit for October and November 2017.

As the landlord has been successful in this application, the landlord is entitled to recover the \$100.00 filing fee from the tenant. I issue a monetary Order to that effect.

Conclusion

I allow the landlord’s application to end this tenancy on the basis of the Mutual Agreement and the 1 Month Notice. The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on November 30, 2017. 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.

I issue a monetary Order in the amount of \$100.00 in the landlord's favour to enable the landlord to recover the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: November 24, 2017

Residential Tenancy Branch