



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, 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;
- a monetary order for unpaid rent pursuant to section 67; 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 9:17 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 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 provided undisputed sworn testimony supported by written evidence that he served the 1 Month Notice to the tenant by sending it to the tenant by registered mail on October 4, 2017. The landlord provided copies of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. In accordance with section 88 of the *Act*, I find that the tenant was deemed served with the 1 Month Notice on October 9, 2017, the fifth day after its registered mailing.

The landlord gave sworn testimony that the tenant was handed a copy of the landlord's dispute resolution hearing package and written evidence package on November 22, 2017. Based on the landlord's undisputed sworn testimony, I find that the tenant was served with these packages on November 22, 2017, in accordance with sections 88 and 89 of the *Act*.

At the beginning of this hearing, the landlord testified that the tenant has now paid the \$300.00 in outstanding rent that the landlord had claimed in the landlord's application for dispute resolution. The landlord withdrew the claim for a monetary award of \$300.00. This portion of the landlord's application is hereby withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenant has lived in this rental building since well before he bought the property about eight years ago. After checking his records, he testified that the tenant paid a \$100.00 security deposit to the previous owner of this rental property on June 5, 1987. On this basis, he maintained that the tenant has been living in this rental unit since that date. Monthly rent is currently set at \$450.00, payable in advance on the first of each month. The landlord is unaware of any written tenancy agreement for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice of October 4, 2017. In that Notice, requiring the tenant to end this tenancy by November 30, 2017, the landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

The landlord testified that the tenant has been late paying her rent frequently. He testified that she was late in her rent payments for August, September and October, noting that the tenant's rent cheque for October 2017 was returned with insufficient funds on October 13, 2017. He said that the tenant paid a portion of the outstanding rent for October with her rental payment for November 2017, and the remainder as part of a money order she left in his mailbox with her December 2017 rent. He testified that there has been a regular pattern of late payment of rent during this tenancy and that he has spoken with the tenant about this concern frequently.

Analysis

Paragraph 47(1)(b) of the Act reads in part as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if...

(b) the tenant is repeatedly late paying rent;...

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late. A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...

The landlord maintained that rent for this tenancy is due by the first of each month. Although the landlord provided few details as to the exact dates when rent payments were made by the tenant, he gave clear and undisputed sworn testimony that the tenant has been late in paying her rent most months, and for at least the past five or six months. I am satisfied that there is a pattern of late payment of rent throughout this tenancy warranting the issuance of the 1 Month Notice.

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. I find that the tenant has failed to file an application for dispute resolution under section 47(4) of the *Act* within the ten days of service of the 1 Month Notice. 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, November 30, 2017.

Based on undisputed testimony of the landlord, I find that the tenant was served with the 1 Month Notice, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*. Section 52 requires that the Notice must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice;
- (b) give the address of the rental unit;
- (c) state the effective date of the notice;
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy; and

(e) when given by a landlord, be in the approved form.

Since the landlord has accepted a payment from the tenant to enable her to stay in the rental unit for the month of December, I find that the landlord is entitled to an Order of Possession that takes effect by 1:00 pm on December 31, 2017. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that time and date, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 from the retained value of the tenant's security deposit.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on December 31, 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 order the landlord to retain \$100.00 from the tenant's security deposit in order to enable the landlord to recover the filing fee for the landlord's application for dispute resolution.

The landlord's application for a monetary award for unpaid rent is dismissed without leave to reapply.

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: December 22, 2017

Residential Tenancy Branch