



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 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 waited until 11:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlords' agent (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 gave undisputed affirmed testimony that the Landlords' Application for Dispute Resolution (the Application) and evidentiary package were posted to the door of the rental unit on October 24, 2017. In accordance with sections 88, 89 (2) and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on October 27, 2017, the third day after being posted.

The landlord gave undisputed sworn testimony that a One Month Notice was posted to the door of the rental unit on September 27, 2017. In accordance with sections 88 and 90 of the *Act*, I find the One Month Notice was deemed served to the tenant on September 30, 2017, three days after its posting.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession based on the One Month Notice?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave affirmed testimony that this tenancy began on November 01, 2011, with a monthly rent of \$625.00, due on the first day of each month. The landlord testified they continue to retain a security deposit in the amount of \$300.00t.

A copy of the signed One Month Notice, dated September 27, 2017, with an effective date of October 27, 2017, was included in the landlord's evidence. The landlord cited the following reasons for the issuance of the One Month Notice:

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.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so.

Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the landlords' undisputed evidence and sworn testimony, I find the tenant did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, due to the failure of the tenant to take this action within 10 days, I find the tenant is conclusively presumed to have accepted that the tenancy ended on October 31, 2017, the corrected effective

date on the One Month Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by October 31, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession.

In this type of matter, the landlord must prove they served the tenant with the Application as per Section 89 of the *Act*.

Section 89(1) of the *Act* does not allow for the Application to be served to the tenant by attaching a copy to a door at the address at which the tenant resides.

Section 89(2) of the *Act* does allow for the Application to be served to the tenant by attaching a copy to a door at the address at which the tenant resides, only when considering an Order of Possession for the landlord.

I find that the landlord has served the Application to the door of the rental unit at which the tenant resides, and for this reason, the monetary portion of the landlord's application for the recovery of the filing fee is dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 09, 2018

Residential Tenancy Branch