



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

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.

Landlord R.C. and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord R.C. (the landlord) indicated that he would be representing the interests of both landlords and the tenant had an advocate attend the hearing to assist the tenant.

The landlord testified that the Application for Dispute Resolution (the Application) was sent to the tenant by way of registered mail on December 21, 2017. The tenant acknowledged receipt of the Application. In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application.

The landlord testified that he left an evidentiary package in the mailbox at the rental unit on January 08, 2018. The tenant acknowledged receipt of the evidentiary package. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the evidentiary package.

The landlord submitted an additional piece of evidence to the Residential Tenancy Branch (RTB) on January 23, 2018. The tenant testified that he did not receive this evidence.

Rule 3.14 of the RTB Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing. As the landlord did not provide the RTB with

the second piece of evidence in accordance with the Rules of Procedure and the tenant testified that they did not receive this evidence, I find that I cannot consider it.

The tenant confirmed that he did not submit any evidence or file an application to dispute the One Month Notice.

The tenant acknowledged receipt of a One Month Notice which was personally served to the tenant on December 01, 2017. In accordance with section 88 of the *Act*, I find the One Month Notice was duly served to the tenant.

The second page of the One Month Notice was not provided at the time of the hearing. The tenant testified that he received both pages of the One Month Notice.

I instructed the landlord to provide the One Month Notice to the Residential Tenancy Branch by the end of the business day of the date of the hearing. As service of the One Month Notice to the tenant is the reason that the tenant filed the Application for this hearing and the tenant testified that he received both pages of the One Month Notice, I find that the tenant is not prejudiced in accepting the second page of the One Month Notice as late evidence.

The landlord provided a copy of the One Month Notice in the required time.

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 and the tenant agreed that this tenancy began sometime on or about October of 2014, with a monthly rent of \$850.00, due on the first day of each month. The landlord testified that he does not have a security or pet damage deposit from the tenant.

A copy of the signed One Month Notice, dated December 01, 2017, with an effective date of January 31, 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:

- *put the landlord's property at significant risk.*

Tenant has not done required repairs of damage to the unit/site

In addition to the above evidence, the landlord also provided:

- a letter from the landlord to the tenant dated November 24, 2017, in which the landlord outlines the issues surrounding the by-law infraction at the rental unit and the deadlines given to the tenant by the municipality and the landlord for the tenant to clean up the debris around the rental unit to bring it in compliance with the municipality by-law for untidy or unsightly premises. The letter warns that if the repairs are not completed, the municipality will do it at the expense of the landlord in the amount of \$22,851.22. The letter gives the tenant a deadline of December 01, 2017, to complete the required clean-up of debris and wrecked vehicles on the property with a warning of a One Month Notice being issued if it is not done; and
- An e-mail from the landlord to the municipal by-law officer dated December 02, 2017, regarding the clean-up of the property and the fact that the landlord spoke with the tenant about the situation and the tenant was informed that the by-law officer would not give an extension past January 01, 2018, for the debris and wrecked vehicles on the property to be removed. The e-mail goes on to state that if the repairs to the property are not completed by January 01, 2018, the landlord will follow through with the eviction; and
- pictures of the residential premises with the two most recent pictures taken on January 05, 2018, showing two vehicles in the driveway and various debris in the yard of the property.

The landlord testified that they have had a notice of a by-law violation from the municipality that the rental unit is located in. The landlord submitted that the tenant was given multiple warnings to clean-up two wrecked vehicles and debris in the yard from the by-law officer and the landlord but that the required repairs to the property have not been completed. The landlord testified that only \$500.00 of the \$850.00 monthly rent has been paid for January 2018. The landlord stated that he is seeking an Order of Possession based on the uncontested One Month Notice.

The advocate submitted that the tenant and the landlord have a good relationship and that the landlord kept telling the tenant to not worry about the situation, just to do his best to clean up the residential premises and the tenant was under the impression that the landlord would not follow through with the eviction. The advocate maintained that the landlord gave the tenant the impression that they would clean up the property together.

The landlord agreed that he has a good relationship with the tenant but as the repairs to the property were not completed by the deadline given of January 01, 2018, the landlord feels he has no choice but to evict the tenant so that he can complete the repairs to the property by himself in order to not have the municipality do it at the landlords' expense.

Analysis

Although the landlord and the tenant have a good relationship and the landlord may have been willing to withdraw the One Month Notice if the repairs to the property were completed by January 01, 2018, I find that the landlord did not issue a formal written withdrawal of the One Month Notice as the repairs were not completed by this date.

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 evidence and affirmed 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 will end on January 31, 2018, the effective date on the One Month Notice. In this case, the tenant and anyone on the premises are required to vacate the premises by January 31, 2018 and the landlord is entitled to an Order of Possession for this date.

Therefore, as the landlords have been successful in this application, I allow them to recover the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **on January 31, 2018, 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour in the amount of \$100.00, which allows the landlords to recover the filing fee from the tenant.

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 29, 2018

Residential Tenancy Branch