



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD CASCADIA APARTMEN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes 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; 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 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 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.

Landlord AR (the landlord) gave sworn testimony supported by written evidence by way of a signed and witnessed Proof of Service document that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) was posted on the tenant's door on December 13, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with this Notice on December 16, 2017, the third day after it's posting.

The landlord provided undisputed sworn testimony and written evidence that they sent the tenant the dispute resolution hearing package and written evidence to the tenant by registered mail on January 10, 2018. The landlord submitted copies of the Canada Post Tracking Number and Customer Receipt to confirm this registered mailing. The landlord testified that Canada Post has returned this package to the landlord as the tenant did not claim this package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with these documents on January 15, 2018, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence a copy of the original Residential Tenancy Agreement for this tenancy which started on February 1, 2006. This Agreement showed the tenant's spouse and another family member as the tenants. The landlord gave undisputed sworn testimony that the tenant has been residing in this rental suite since the tenancy began, although the tenant's spouse and child have not been residing there for some time. Current monthly rent is set at \$1,056.00, payable on the first of each month. The landlord continues to hold the \$437.50 security deposit for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice, requiring the tenant to end this tenancy by January 31, 2018. The landlord cited the following reason for the issuance of the Notice:

Tenant is repeatedly late paying rent.

The landlord also entered into written evidence copies of a series of 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notices) extending from September 2017 until February 2018. The landlord also submitted copies of receipts for the tenant's payment of rent for each of these six months. Each of these confirmed that the tenant paid rent after the first of each month when rent was due. The landlord also entered into written evidence a copy of a November 2, 2017 warning letter to the tenant, advising them that any further late payments of rent would lead to the landlord's issuance of a 1 Month Notice seeking an end to the tenancy for repeated late payments of rent.

The landlord's written evidence included copies of receipts for "use and occupancy" accepted for each of the months following the landlord's issuance of the 10 Day Notices. The most recent payment accepted by the landlord for use and occupancy only and not to reinstate this tenancy was for the month of February 2018.

Analysis

In considering this matter, I have reviewed the landlord's 1 Month Notice to ensure that the landlord has complied with the requirements as to the form and content of section 52 of the *Act*. I find that the landlord's 1 Month Notice meets all of the requirements of section 52.

In addition, I note the wording of RTB Policy Guideline #38, which 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...

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." There is no dispute that the tenancy agreement requires the tenant to pay all of the rent by the first of each month. The landlord has provided convincing evidence that the tenant was late in paying their rent on four successive occasions, prior to the issuance of the 1 Month Notice.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause, for the tenant's ongoing late payments of rent. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 31, 2018. As the landlord has accepted a payment from the tenant for use and occupancy only for the month of February 2018, I find that the landlord is entitled to an Order of Possession, which takes effect by 1:00 p.m. on February 28, 2018. 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 has been successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee. Although the landlord's application does not seek to

retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$100.00 from the security deposit for this tenancy.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on February 28, 2018. 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 award of \$100.00 in the landlord's favour to recover the landlord's filing fee. To give effect to this award, I order the landlord to retain \$100.00 from the security deposit for this tenancy. The security deposit currently retained by the landlord is hereby reduced by \$100.00.

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: February 09, 2018

Residential Tenancy Branch