



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OT
 OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking an order suspending or setting conditions on the Landlords’ right to enter the rental unit and other unspecified issues for dispute.

This hearing also dealt with a cross-application filed by the Landlords under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, M.C., who provided affirmed testimony. The Tenant did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord’s Application. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified on January 11, 2018, the Application and the Notice of Hearing were personally served on the Tenant in the presence of a witness. As a result of the above and in the absence of evidence to the contrary, I find that the Tenant was served the Application and the Notice of Hearing on January 11, 2018, the date the documents were personally served on them.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision. At the request of the Landlord, copies of the decision and any orders issued in favor of the Landlords will be e-mailed to them at the e-mail address provided in the hearing.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Are the Landlords entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began on June 1, 2016, and that rent is due on the first day of each month. Although the tenancy agreement indicates that rent at the start of the tenancy was \$875.00, the Landlord testified that effective June 1, 2017, rent was increased to \$910.00. In support of her testimony the Landlord provided a copy of the Notice of Rent Increase in the documentary evidence before me. The tenancy agreement also indicates that a security deposit in the amount of \$437.50 was paid by the Tenant, which the Landlord testified they still hold.

The Landlord testified that the Tenant was repeatedly late paying rent and that as a result, a One Month Notice to End Tenancy for Cause (the "One Month Notice") was personally served on the Tenant on December 28, 2017.

The One Month Notice in the documentary evidence before me, dated December 28, 2017, has an effective vacancy date of January 31, 2018, and indicates that the reason for serving the One Month Notice is because the Tenant is repeatedly late paying rent.

The Landlord testified that the Tenant paid their rent late five times in the last year and submitted copies of five 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notices").

The Landlord testified that on January 31, 2018, the Tenant advised them that they were moving out and that the Landlords witnessed the Tenant removing their belongings from the rental unit on that date. However, as the Tenant has not returned the keys or provided a forwarding address, the Landlord testified that they are still seeking an Order of Possession.

Analysis

Although the Tenant filed an Application seeking an order suspending or setting conditions on the Landlords' right to enter the rental unit and other unspecified issues for dispute, the Tenant did not appear at the hearing to present evidence in support of their Application. As the Landlord, who is one of the respondents named in the Tenant's Application, appeared at the hearing, the Tenant's Application is dismissed without leave to reapply.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. It also states that if a tenant who has received a notice under this section does not make an application for dispute resolution within 10 days of the date they receive the One Month Notice, the tenant 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on December 28, 2017, the day it was personally served on them.

Although some of the Tenant's documentary evidence refers to the One Month Notice, as the Tenant did not specifically indicate that they wish to dispute the One Month Notice on their Application, I find that the Tenant did not dispute the One Month Notice within that 10 day period granted under section 47(4) of the *Act*. In any event, I have already dismissed the Tenant's Application without leave to reapply as they did not appear at the hearing.

Based on the above I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on January 31, 2018, the effective date of the One Month Notice and the Landlords are therefore entitled to an Order of Possession. As the effective date of the One Month Notice has passed, the Order of Possession is effective two days after service on the Tenant pursuant to section 68 of the *Act*.

Pursuant to section 72 of the *Act*, I also find that the Landlords are entitled to retain from the security deposit paid by the Tenant, \$100.00 for the recovery of the filing fee. The balance of the security deposit is to be dealt with in accordance with the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of the that Court.

I also order that the Landlords are entitled to retain \$100.00 from the Tenant's security deposit, the balance of which is to be dealt with in accordance with the *Act*.

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: March 5, 2018

Residential Tenancy Branch