



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 landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for Cause, pursuant to section 47 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

While the landlord, represented by agent, L.M. (the "landlord") attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord gave undisputed testimony that a 1 Month Notice for Cause was sent to the tenant by way of Canada Post Registered Mail on December 20, 2017. A copy of the Canada Post tracking number and receipt were provided to the hearing. Pursuant to sections 88 & 90 of the *Act* the tenant is found to have been served on December 25, 2017, five days after its posting.

On January 30, 2018 the landlord sent the tenant an application for dispute resolution and evidentiary package by way of Registered Mail. A copy of the Canada Post tracking number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed to have been served with these documents February 5, 2018, five days after their service. The landlord said that his records from Canada Post indicate that the Registered Mail document was refused.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave evidence that the tenancy in question began on June 1, 2013. Rent at the outset of the tenancy was \$795.00 and a security deposit of \$400.00 paid at the start of the tenancy, continues to be held by the landlord.

The landlord explained that the tenant was served a 1 Month Notice to End Tenancy for Cause because of on-going concerns that the landlord had regarding the continued presence of the tenant's uninsured car in the parking garage. The landlord said that several warning letters were sent to the tenant. Copies of these letters were provided as part of the landlord's evidentiary package.

Analysis

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 his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. 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, January 31, 2018.

I am therefore issuing an Order of Possession to the landlords effective 2 days after service on the tenant.

As the landlord was successful in his application he may recover the \$100.00 filing fee from the tenant. Using the offsetting provision contained in section 72 of the *Act*, the landlord may retain \$100.00 from the tenant's security deposit.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms.

Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee.

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 22, 2018

Residential Tenancy Branch