



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 an Application for Dispute Resolution (the “Application”) that was filed by the Landlord 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 agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent 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 explained below.

The Agent testified that the Application, the Notice of Hearing and the Documentary Evidence before me were sent to the Tenant by registered mail on August 22, 2018, and received by her on August 27, 2018. The Agent provided a copy of the registered mail address label, tracking number, and a print out from the Canada Post website confirming receipt by the Tenant on August 27, 2018. As a result, I find that the Tenant was served in accordance with the *Act* and the Rules of Procedure on August 27, 2018.

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 Agent, copies of the decision and any orders issued in favor of the Landlord will be faxed to him at the fax number provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Agent stated that the month-to-month tenancy began on March 1, 2015, and that rent in the amount of \$710.00 is due on the first day of each month. The Agent also stated that a security deposit in the amount of \$350.00 was paid by the Tenant.

The Agent stated that the Tenant and her guests are continually disturbing other occupants of the rental property with loud partying and that she has not paid rent on time since at least January of 2016. The Agent stated that the Tenant has been given warnings but the behavior has continued. As a result, the Agent stated that a One Month Notice to End Tenancy for Cause (the "One Month Notice") was posted to the door of the rental unit on June 28, 2018.

The One Month Notice in the documentary evidence before me, dated June 28, 2018, has an effective date of July 31, 2018, and states that the reason for ending the tenancy is because the tenant is repeatedly late paying rent and the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The Agent stated that the Tenant has not paid rent for October, 2018, and remains in possession of the rental unit. As a result, the Agent sought a two day Order of Possession.

Neither the Tenant nor an agent acting on her behalf attended the hearing to provide any evidence or testimony for my consideration.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the *Act*, I find that the Tenant was deemed served with the One Month Notice on July 1, 2018, three days after it was posted to the door of the rental unit.

Section 47(5) of the *Act* states that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the

tenant receives the 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.

Although the One Month Notice states that the effective date of the notice is July 31, 2018, given the date the One Month Notice was deemed served and the date upon which rent is due under the tenancy agreement, I find that this date does not comply with the minimum notice period required under section 47(2) of the *Act*. As a result, I find that the effective date of the One Month Notice is automatically corrected to August 31, 2018, pursuant to section 53 of the *Act*.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that she is conclusively presumed under section 47(5) of the *Act* to have accepted the One Month Notice and I find that the tenancy therefore ended on August 31, 2018. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the *Act*. As the corrected effective date has passed and the Agent testified that rent for October has not been paid, the Order of Possession will therefore be effective two days after service on the Tenant.

I also find that the Landlord is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*, which they are authorized to retain from the Tenant's security deposit or to recover by way of the attached Monetary Order.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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 that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlord is 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this

Order, the Landlord is authorized to retain \$100.00 from the Tenant's security deposit, should they wish to do so.

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: October 5, 2018

Residential Tenancy Branch