



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCE REALTY AS AGENT FOR FREEDOM PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MNRL FFL

Introduction

This hearing was convened in response to an application by the landlord made September 21, 2018 under the *Residential Tenancy Act* (the Act) for an Order of Possession and to recover the filing fee. The landlord later filed an amendment October 24, 2018 for a monetary order. The hearing was conducted by conference call.

Two of the landlord's agents attended the hearing. I accept the landlord's testimony in that although the tenant was personally served on September 27, 2018 in accordance with Section 89 of the Act with the application for dispute resolution and Notice of Hearing (Notice of Dispute Resolution Proceeding) respecting the landlord's claim for an Order of Possession, the tenant did not call into the conference call during the hearing of 22 minutes and therefore did not participate in the hearing. The landlord was given opportunity to be heard, to present evidence and make submissions.

Preliminary matters

The landlord filed a *late* amendment to this matter for unpaid rent 11 days before the hearing on October 24, 2018, and sent it to the tenant by registered mail the same date. Rules of Procedure stipulate the landlord's complete application must be served on a respondent 14 days before a hearing. I find that the tenant is deemed by Section 90 of the Act to have received the registered mail 5 days after mailing, with the result that the landlord's amendment is late for both the reasons stated. As further result I **dismiss** the landlord's amended portion of their application, *with leave to reapply*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee?

Background and Evidence

This tenancy began in September 2016. The monthly payable rent is \$832.00. The landlord holds a security deposit in trust of \$400.00. The landlord provided evidence that on August 03, 2018 the tenant was served with a One month Notice to End Tenancy for Cause pursuant to Section 47(1)(b)(d)&(h) of the Act by posting it on the tenant's door. The landlord submitted a proof of service document in respect to the service. The One month Notice contains an effective date of September 30, 2018. The tenant did not file an application to dispute the Notice to End Tenancy and still resides in the unit.

Analysis

Section 47 of the Act provides that if a tenant does not apply to dispute a One Month Notice to End Tenancy for cause within 10 days after receiving it, as prescribed, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date. The Notice to End Tenancy required the tenant to vacate the rental unit by September 30, 2017.

I find the tenant was served with the Notice. I find the Notice complies with Section 52 of the Act. I find the tenant has not disputed the notice and has not vacated the unit, although the effective date of the Notice has passed. As the effective date of the Notice has passed I find that the landlord is entitled to an Order of Possession effective 2 days from the day it is served on the tenant.

I grant such an **Order of Possession** to the landlord. The tenant must be served with this Order of Possession. Should the tenant fail to comply with the Order, the Order

may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord was successful in their claim they are entitled to recover their filing fee.

I Order that the landlord may retain **\$100.00** of the tenant's security deposit in satisfaction of the filing fee, with the result that the balance of \$300.00 shall be held in trust by the landlord until administered at the end of the tenancy according to the Act.

Conclusion

The landlord's application is granted and is given an Order of Possession in the above terms.

This Decision is final and binding.

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: November 05, 2018

Residential Tenancy Branch