



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

- an Order of Possession for Cause, pursuant to sections 47 and 55 of the *Act*, and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The landlord and the landlord's agent appeared at the date and time set for the hearing of this matter. The landlord's agent primarily spoke on the landlord's behalf and is herein referred to as "the landlord". The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord testified that the tenant was served the landlord's notice of this hearing by Canada Post registered mail on October 12, 2018, and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision. With the agreement of the landlord, I accessed the Canada Post website to confirm that the landlord's notice of this hearing was delivered to the tenant. As such, I find that the tenant was served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord testified that there is a written tenancy agreement between the parties but failed to submit a copy of the tenancy agreement into evidence. As such, the landlord provided the following testimony regarding the tenancy agreement:

- This month-to-month tenancy began July 1, 2015.
- Monthly rent of \$1,140.00 is payable on the first of the month.
- The tenant paid a \$550.00 security deposit at the beginning of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of the One Month Notice to End Tenancy (One Month Notice) dated September 24, 2018 into evidence, which states an effective move-out date of November 1, 2018, with the following box checked off as the reason for seeking an end to this tenancy:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlord testified that the One Month Notice was served to the tenant by posting on the door to his rental unit on September 24, 2018 at approximately 2:00 p.m. The landlord testified that her husband witnessed the service but he was not available to attend the hearing to provide witness testimony to the service. The landlord testified that on or around September 29, 2018, she spoke with the tenant about the One Month Notice, as confirmation that he received it.

The landlord testified that she has submitted into evidence complaint letters from the other residents in the rental property regarding the disturbances caused by the tenant or persons permitted on the property by the tenant, such as parties and stealing property belonging to the other residents.

The landlord has not received any notice from the tenant that he is disputing the One Month Notice.

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.

In this case, I accept the landlord's undisputed testimony that she posted the One Month Notice to the tenant's door on September 24, 2018.

Section 15 of Residential Tenancy Policy Guideline #12. Service Provisions explains the requirement for proof of service, as follows, in part:

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

As the landlord was the person who "actually served the documents" and she was able to testify to the date and time of service, the method of service, location of service, and the specifics of the documents served, I find that the landlord was able to prove service of the One Month Notice on the tenant.

As such, I find that the tenant was deemed in receipt of the One Month Notice on September 27, 2018, three days after posting on the tenant's door pursuant to the deeming provisions set out in section 90 of the *Act*.

Section 47(5) of the *Act* states that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy if the tenant fails to make an application for dispute resolution in accordance with section 47(4) of the *Act*.

I find no evidence before me that the tenant filed an application for dispute resolution within the ten days of receipt of the notice, as provided under section 47(4) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 47(5) of the *Act*. In this case, the effective vacancy date of the notice was November 1, 2018.

For an Order of Possession to be granted to a landlord, sections 47(3) and 55 of the *Act* require that a landlord's notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice to determine if it is compliant with the requirements of section 52 of the *Act*. After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

As I have made a finding that the tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the One Month Notice, and that the One Month Notice complies with section 52 of the *Act*, the landlord must be granted an Order of Possession. As the effective vacancy date of the One Month Notice has now passed, this Order of Possession will be effective two days after service upon the tenant by the landlord.

As the landlord was successful in their application, the landlord is entitled to recover the cost of the filing fee for the application from the tenant. I order that the landlord retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective two days after service upon the tenant. The landlord must serve this Order on the tenant as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order that the landlord retain \$100.00 from the security deposit in satisfaction of the recovery of the filing fee from the tenant.

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 20, 2018

Residential Tenancy Branch