



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord participated in the teleconference; the tenant did not despite keeping the line open until 9:40 a.m. for this hearing which was scheduled for 9:30 a.m. on this date.

The landlord gave sworn testimony that she personally served the Notice of Hearing Package and her Application to the tenants on October 20, 2018 in the presence of a witness. Based on the undisputed testimony, I am satisfied that the tenants were served notice of this hearing in accordance with section 89 of the Act and the hearing proceeded and completed on that basis. The landlord was given full opportunity to present their evidence, make arguments and make submissions.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for Cause pursuant to section 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord gave the following testimony. The tenancy began on September 1, 2015. The current monthly rent is \$1617.00 due on the first of each month. The landlord collected and still holds a security deposit of \$750.00. The landlord testified that she

issued a One Month Notice to End Tenancy for Cause on October 7, 2018 with an effective date of November 30, 2018 for the following reasons:

Tenant is repeatedly late paying rent;

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants have been late in paying the rent 7 of the last 12 months. The landlord requests an order of possession.

Analysis

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.

In this case, the tenant did not dispute the One Month Notice to End Tenancy for Cause. In addition, the landlord provided extensive documentation to support her position that the tenant is repeatedly late in paying the rent. Residential Tenancy Policy Guideline 38 addresses late payments as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

Based on the extensive documentation before me, the landlords' undisputed testimony and in the absence of any disputing evidence from the tenants, I find that the landlord has provided sufficient evidence to support the issuance of the notice. The form and content of the notice meets the requirements under section 52 of the Act.

As the landlord was successful in her application, I find that the landlord is entitled to the recovery of the \$100.00 filing fee. The landlord is entitled to retain \$100.00 from the security deposit in full satisfaction of the claim.

Conclusion

The One Month Notice to End Tenancy for Cause dated October 7, 2018 with an effective date of November 30, 2018 is confirmed, it is of full effect and force. The tenancy is terminated.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 30, 2018**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 27, 2018

Residential Tenancy Branch