



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

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*.

The landlord's agents L.B. and D.J. attended on behalf of the corporate landlord at the date and time set for the hearing of this matter and are herein referred to as "the landlord". The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. 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. Landlord's agent L.B. testified that he personally served the tenant with the landlord's notice of this hearing and evidence on November 8, 2018 at approximately noon, at the tenant's rental unit door, witnessed by a front-desk staff member.

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 landlord's agent L.B. was the person who "actually served the documents" and he 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 notice of this hearing and evidence on the tenant.

As such, I find that the tenant was served with the notice of this hearing and the landlord's evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the notice to end tenancy for cause?

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.

A written tenancy agreement was submitted into evidence providing the following details pertaining to this tenancy:

- This tenancy began on September 19, 2015 and is currently a month-to-month tenancy.
- Monthly rent of \$450.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$225.00, which continues to be held by the landlord.

The landlord submitted a copy of the One Month Notice to End Tenancy (One Month Notice) dated October 19, 2018 into evidence, which states an effective move-out date of November 30, 2018, with the following boxes checked off as the reason for seeking an end to this tenancy:

Tenant has allowed an unreasonable number of occupants in the unit.

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The "Details of Cause" section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

Illegal activity jeopardizing the safety of other tenants.

The landlord testified that the One Month Notice was served to the tenant by posting on the door to his rental unit and leaving a copy in his mail box on October 19, 2018 at approximately 1:00 p.m. The landlord submitted into documentary evidence a Proof of Service signed by a witness to the service, in support of his sworn testimony.

The landlord provided testimony regarding illegal drugs seized from the tenant's rental unit, the tenant's prior assault on the landlord's staff member, and the tenant's unauthorized alteration to his rental unit door lock. The landlord submitted into documentary evidence copies of correspondence with the local police department regarding the arrest of the tenant for illegal activity involving the possession of drugs for the purposes of trafficking, which seriously jeopardizes the health and safety of the other residents of the building.

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 testimony that the One Month Notice was posted to the tenant's door and left in his mail box on October 19, 2018, as the landlord has also submitted a proof of service signed by a witness to the service.

As such, I find that the tenant was deemed in receipt of the One Month Notice on October 22, 2018, three days after posting on the tenant's door and leaving it in his mail box 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 30, 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.

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.

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: December 13, 2018

Residential Tenancy Branch