



Dispute Resolution Services

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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.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she posted the notice of dispute resolution package to the tenant's door at the end of November 2018 but could not recall on what date specifically. The tenant testified that he received the notice of dispute resolution package at the end of November 2018 but could not recall on what date. Pursuant to section 71 of the *Act*, I find that while the notice of dispute resolution package was not served in accordance with section 89 of the *Act*, it was sufficiently served for the purposes of this *Act* because the tenant confirmed receipt of the package.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 15, 2014 and is currently ongoing. Monthly rent in the amount of \$884.00 is payable on the first day of each

month. A security deposit of \$425.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on October 30, 2018 she served the tenant with a One Month Notice to End Tenancy for Cause with an effective date of November 30, 2018 (the "One Month Notice"). The tenant confirmed receipt of the One Month Notice but could not recall on what date though he thought it was near the end of November 2018.

The One Month Notice stated the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 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;
- Tenant has not done required repairs of damage to the unit/site.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The tenant testified that he has not applied to the Residential Tenancy Branch to cancel the One Month Notice.

The landlord testified that the tenant has failed to maintain his suite and that the smell of urine and garbage permeates into the hallway. The landlord testified that the tenant swears at the resident manager making it difficult for her to work. The resident manager confirmed the landlord's testimony.

The tenant testified that he had knee replacement surgery two years ago and that this makes it difficult for him to clean. The tenant testified that he does not recall swearing at the resident manager.

The tenant testified that he paid his rent in full for January 2018. This fact was not contested by the landlord.

Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant by November 30, 2018, in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) state 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 within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the RTB to dispute the One Month Notice.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective or corrected effective date of the notice. As this did not occur, I find that the landlord is entitled to an Order of Possession effective January 31, 2019. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on January 31, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on January 31, 2019**, 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: January 10, 2019

Residential Tenancy Branch