



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

On January 11, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with S.A. and S.M. attending as agents on behalf of the Landlord. The Tenants did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing package, including evidence, was served to all of the Tenants, except Tenant C.B., by registered mail on January 14, 2019. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants, except Tenant C.B., were deemed to have received the respective Notice of Hearing packages and evidence five days after they were mailed.

The Landlord advised that there were no tenancy agreements in writing and that rent was paid to her by each Tenant individually. She stated that they each rented their own room in the upper unit that they shared. The Landlord was not sure if the Tenants were tenants in common or if they each had their own tenancy agreement, so she served each Tenant a separate Notice.

Although the Landlord named five Tenants as respondents in the Application, she understood that she could not obtain an Order of Possession for all of the respondents on this one Application as it appeared as if each Tenant had a separate, unwritten tenancy agreement. Consequently, she was advised that she could pick one Tenant to proceed on for this hearing, and she chose Tenant T.W.

As a result, I amended the Landlord's Application to exclude all of the remaining named respondents.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for Cause?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord submitted that five Tenants live in the upstairs and the Tenants pay their own rent separately. She stated that the Tenants were each served with One Month Notice to End Tenancy for Cause on December 12, 2018 by registered mail. Each Notice noted "Upper" for each respective Tenant.

The Landlord stated that she was unaware when the tenancy started for T.W. but rent was currently \$450.00 per month, due on the first of each month. She stated that while the Tenants rented separate rooms, their rooms did not have specific designations to identify which room was rented to which Tenant. As well, she is not sure if T.W. had paid a security deposit.

The reason the Notice was served is because the "Rental unit/site must be vacated to comply with a government order." She provided documentary evidence that the municipality had issued an order that rental of the property must be ceased as it does not comply with the zoning by-laws. The Notice indicated that the effective date was January 31, 2019.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on December 12, 2018, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The Landlord's evidence is that the Notice was served on December 12, 2018 by registered mail, and a receipt was provided to corroborate service. As per Section 90 of the *Act*, the Notice would have been deemed received after five days of being mailed. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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."*

After being deemed to receive the Notice, the tenth day fell on Thursday December 27, 2018, and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the second page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. As such, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain \$100.00 from the security deposit, if she chooses to do so, in satisfaction of the debt outstanding. If there is no security deposit, I grant the Landlord with a conditional Monetary Order in the amount of **\$100.00**.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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.

The Landlord is provided with a conditional Monetary Order in the amount of **\$100.00** in the above terms, if there is no security deposit. The Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 25, 2019

Residential Tenancy Branch