



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANFORD HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

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*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord's agent M.B. attended on behalf of the housing society landlord and is herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The tenant confirmed receipt of the landlord's Notice of Dispute Resolution Proceeding package and evidence, served in person to the tenant on February 28, 2019. The tenant did not submit any evidence in this matter.

Based on the undisputed testimonies of the parties, I find that the tenant was served with the documents for this hearing in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause dated January 8, 2019?

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.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This tenancy began February 15, 2013 as a fixed-term with an end date of July 31, 2013, at which point the tenancy converted to a month-to-month tenancy.
- Monthly rent of \$375.00, payable on the first of the month, is paid directly to the landlord through tenant's government disability assistance.
- At the beginning of the tenancy, the tenant paid a security deposit of \$300.00 which continues to be held by the landlord.

The landlord testified that the tenant was served with the One Month Notice to End Tenancy for Cause dated January 8, 2019 (herein referred to as the "One Month Notice") by Canada Post registered mail on January 10, 2019. The tenant testified that he received the notice when he picked up the registered mail at the post office on January 23, 2019.

The landlord submitted a copy of the One Month Notice into evidence for this hearing which states an effective move-out date of February 28, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

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 attached a separate sheet providing the "Details of Cause", which included a chronology outlining the inspections of the rental unit and the notices to the tenant to remedy the failure to maintain health and sanitary standards in the rental unit.

The tenant testified that he did not know he could dispute the notice, although he did state he sought the assistance of an advocate. Ultimately, the tenant failed to file an application for dispute resolution to dispute the One Month Notice.

The landlord testified that the tenant signed a Mutual Agreement to End Tenancy in which the tenant agreed to move out of the rental unit on February 28, 2019. The tenant failed to move out of the rental unit on that date. I explained to the landlord that there was no such document submitted into evidence before me for this hearing.

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, the tenant acknowledged receipt of the One Month Notice on January 23, 2019 but failed to file an application to dispute the notice.

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*.

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 February 28, 2019.

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.

The landlord confirmed that they have received payment for the tenant's use and occupancy of the rental unit for the month of April 2019. Therefore, I grant an Order of Possession to the landlord effective 1:00 p.m. on April 30, 2019.

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. Therefore, I grant a Monetary Order in the favour of the landlord in the amount of \$100.00 in satisfaction of the recovery of the filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective 1:00 p.m. on April 30, 2019.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order 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 grant a Monetary Order of \$100.00 in the favour of the landlord in satisfaction of the recovery of the filing fee.

The landlord is provided with this Order in the above terms and 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: April 15, 2019

Residential Tenancy Branch