



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent and the landlord attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, the landlord's agent and I were the only ones who had called into this teleconference.

The tenant's agent testified that the landlord was served the notice of dispute resolution package by registered mail on March 25, 2019. The tenant's advocate provided the Canada Post Tracking Number to confirm this registered mailing. The Canada Post delivery progress printout was entered into evidence and states that the package was accepted at the post office on March 25, 2019 and on March 26, 2019 the package was refused by the recipient and returned to the sender.

Section 89(1) of the *Act* states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Section 90 of the *Act* states that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

- (a)if given or served by mail, on the 5th day after it is mailed;
- (b)if given or served by fax, on the 3rd day after it is faxed;
- (c)if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d)if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Pursuant to section 90 of the *Act*, I find that the tenant was deemed served with the landlord's application for dispute resolution on March 30, 2019, five days after its mailing. The refusal of the tenant to accept service of the landlord's application for dispute resolution does not invalidate service, as per section 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and his agent, not all details of their respective submissions and arguments are

reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified that his mother was the original landlord and owner of the subject rental property; however, she passed away last year and he was named the executor of his mother's estate. The landlord entered into evidence a document from the Supreme Court of British Columbia dated December 20, 2018 which states that the administration of the estate of the deceased is granted to the landlord. The landlord testified that title of the subject rental property has now been transferred to himself.

The landlord testified that the tenant had a tenancy agreement with his mother but that he did not have a copy and did not know the terms agreed to. The landlord's agent testified that after the landlord's mother passed away the landlord reached out to the tenant to try and arrange a viewing of the subject rental property, but the tenant refused to deal with him or allow his access to the subject rental property. The landlord retained the services of the agent to assist him in dealing with the tenant.

The landlord's agent testified that the tenant was volatile and refused to cooperate with the landlord or herself or acknowledge the landlord as the new owner and landlord of the subject rental property. The landlord's agent testified that the tenant has pit bulls and uses them to prevent the landlord and herself from entering the subject rental property.

The landlord's agent testified that on March 6, 2019 the tenant was served with a One Month Notice to End Tenancy for Cause with an effective date of April 30, 2019 (the "One Month Notice") via registered mail. The Canada Post receipt and tracking number were entered into evidence. The landlord's agent testified that the package containing the One Month Notice was returned to sender because the tenant refused to accept it. The landlord entered into evidence a photograph of the above registered mail package which has a Canada Post sticker on it stating that the package was refused.

The One Month Notice states 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; and
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant did not file an application with the Residential Tenancy Branch to dispute the One Month Notice.

Analysis

Section 1 of the *Act* defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Based on the landlord's undisputed testimony, I accept that he is the owner of the subject rental property. Based on the landlord's undisputed testimony and the document from the Supreme Court of British Columbia, I find that the landlord is the executor of his late mother's estate. I therefore find that the landlord is a landlord as defined under section 1 of the *Act*.

Section 88(c) of the *Act* states that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person may be served by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.

Section 90 of the *Act* states that a document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*], unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.

Pursuant to section 90 of the *Act*, I find that the tenant was deemed served with the One Month Notice on March 11, 2019, five days after its mailing, in accordance with section 88 of the *Act*. The refusal of the tenant to accept service not invalidate service, as per section 90 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 being deemed to have received it. 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 being deemed to have received it led to the end of this tenancy on the effective date of the notice. In this case, this requires the tenant to vacate the subject rental property by April 30, 2019. I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on April 30, 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 subject rental property by 1:00 p.m. on April 30, 2019, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on April 30, 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.

I issue a Monetary Order to the landlord in the amount of \$100.00.

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 25, 2019

Residential Tenancy Branch