



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession for cause. The landlord appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant was not present, I explored service of hearing documents upon the tenant. The landlord testified that he personally gave the tenant a copy of the hearing package immediately after he received it from the Residential Tenancy Branch at the Service BC office. I accepted the landlord's testimony that the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

I noted that the landlord had also submitted an Amendment to indicate he had served a 10 Day Notice to End Tenancy for Unpaid Rent and was seeking a Monetary Order for unpaid rent for April 2019 and May 2019. The landlord had testified that he only served the original hearing package upon the tenant and not the Amendment. Accordingly, I found the tenant was notified that this proceeding would deal with a monetary claim and I did not permit the application to be amended. I noted that the 10 Day Notices provided by the landlord were for outstanding rent that pre-dated the 1 Month Notice. The landlord testified that the tenant was late in paying rent due January 31, 2019 and September 30, 2018 but that rent was eventually paid and he continued with the tenancy. Since the tenancy was reinstated by payment of rent, I found it was not before me to determine whether the tenancy should end for unpaid rent and the 10 Day Notices to be irrelevant to the matter before me.

In light of the above, the only issue for me to determine was whether the landlord is entitled to an Order of possession based on a 1 Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord entered into a tenancy with two co-tenants starting on August 30, 2018. The landlord collected a security deposit of \$900.00 and a pet damage deposit of \$900.00. The tenants were required to pay rent of \$1,800.00 on the last day of every month.

The landlord testified that the co-tenant referred to by initials TW authorized the landlord to use her pet damage deposit for her share of rent owed for February 2019 and then TW moved out of the rental unit, leaving the one co-tenant named in this Application in occupation of the unit.

The landlord testified that on February 28, 2019 he and a witness personally served a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") upon the tenant named in this Application. The 1 Month Notice has a stated effective date of March 31, 2019. The tenant did not file to dispute the 1 Month Notice, did not vacate the rental unit and did not pay any rent for the months of April 2019 or May 2019.

The landlord seeks an Order of Possession as soon as possible.

The landlord included a copy of the tenancy agreement and the subject 1 Month Notice in the documentation submitted, among other documents.

Analysis

Section 55(2) provides that a landlord may seek an Order of Possession in certain circumstances, including:

- (2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I accept the unopposed submissions of the landlord that a 1 Month Notice to End Tenancy for Cause was served upon the tenant on February 28, 2019, in person. Pursuant to section 47(5), the tenant had 10 days from February 28, 2019 to file an Application to Dispute Resolution to dispute the 1 Month Notice or the tenant would be conclusively presumed to have accepted the end of the tenancy and vacate the rental unit on the effective date. The tenant did not file to dispute the 1 Month Notice within the time limit for doing so and I find the tenant is conclusively presumed to have accepted that the tenancy would end and the tenant would have to vacate the rental unit by March 31, 2019. Therefore, I find the landlord is entitled to an Order of Possession under section 55(2) of the Act.

Considering the effective date of the 1 Month Notice has long since passed and the tenant has not paid for any use and occupation of the unit, and given the date of this decision, I provide the landlord an Order of Possession effective two (2) days after service upon the tenant.

The landlord is awarded recovery of the filing fee from the tenant. The landlord is authorized to deduct \$100.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is authorized to deduct \$100.00 from the tenant's security deposit to recover the filing fee paid for this application.

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: May 24, 2019

Residential Tenancy Branch