



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 3, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated March 8, 2019 (the "One Month Notice") and;
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on May 6, 2019 as a teleconference hearing. S.A. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.A. and I were the only persons who had called into this teleconference.

S.A. testified the Application and documentary evidence package was served to the Tenant by registered mail on April 3, 2019. The Landlord submitted a registered mail receipt confirming the mailing. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 8, 2019, the fifth day after the registered mailing.

S.A. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

S.A. testified that the tenancy began on April 1, 2018. Currently rent in the amount of \$1,500.00 is due to the Landlord each month. The Tenant paid a security deposit in the amount of \$750.00 which the Landlord continues to hold. Neither party submitted a copy of the tenancy agreement.

S.A. testified that the Tenant has been repeatedly late paying rent in July, August, October and December 2018, as well as in January, February, March and April of 2019. S.A. stated that the Landlord subsequently served the Tenant with a One Month Notice for Cause dated March 8, 2019 with an effective vacancy date of April 30, 2019 by registered mail on March 8, 2019. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

S.A. stated that the Landlord is unsure if the Tenant continues to occupy the rental unit; therefore, the Landlord is seeking an order of possession in relation to the One Month Notice. If successful, the Landlord is also seeking the return of the filing fee.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on March 8, 2019 with an effective vacancy date of April 30, 2019, by registered mail on March 8, 2019. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on March 13, 2019, the fifth day after the registered mailing.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice 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.

As I have found that the Notice was deemed served on the Tenant on March 13, 2019 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on April 30, 2019.

As the Landlord has not yet been able to confirm if the Tenant has moved out of the rental unit, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is 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: May 07, 2019

Residential Tenancy Branch