



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELLOWOOD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on May30, 2019, wherein the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on April 24, 2019 (the "Notice").

The hearing was scheduled for teleconference at 9:30 a.m. on July 2, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Landlord was represented by an Agent, S.A. and the Tenant was represented by his spouse, K.L., who also appeared as the Tenant's agent.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter, and that evidence which was specifically referenced by the parties during the hearing, are described in this Decision.

Preliminary Matters

The Landlord's name was incorrectly spelled on the Application for Dispute Resolution. Section 64(3)(c) I amend the Landlord's Application to correct this error.

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?

2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence but was not readable. The Landlord's Agent testified as to the contents of the tenancy agreement and confirmed that the tenancy began September 5, 2013. Originally the rent was \$975.00; at the time of the hearing the rent is \$1,000.00 and the Tenant paid a security deposit of \$487.50 on September 5, 2013.

The Landlord's Agent testified that the reason for issuing the Notice is that the Tenant has been causing extreme water damage in the bathroom causing the ceiling in the lower unit to collapse.

The Agent further testified that the Tenant has refused access to the rental unit such that the police have been called on numerous occasions to facilitate the Landlord entering the rental unit.

The Landlord has been unable to determine how the water damage is occurring, except to speculate that the Tenant is doing laundry in the bathtub.

The parties also attended a hearing on February 22, 2019. At that time the parties reached a mutual agreement to end the tenancy on August 20, 2019. The Landlord's agent testified that the problem has persisted and worsened such that the Landlord wishes to end the tenancy prior to August 20, 2019. The file number for that matter is included on the unpublished cover page of this my Decision.

The Landlord's Agent testified that the Notice was served by registered mail on April 25, 2019. The Tenants did not apply to dispute the Notice.

The Tenant's Agent testified as follows. She confirmed that the tenancy began September 5, 2013. She further testified that current rent is \$1,100.00 per month.

She stated that she picked up the Notice "sometime in June of 2019". She further confirmed they have not applied to dispute the Notice as she believed that by attending the hearing she could tell what was going on. In terms of the allegations related to the Notice, she denied washing clothes in the tub and stated that although the Landlord continues to attend the rental unit, they cannot determine the cause of the water damage.

Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*. A landlord who has cause may end a tenancy provided that they do so in accordance with section 47 of the *Act*; the relevant portions of that section read as follows:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

...

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Introduced in evidence by the Landlord was a copy of the registered mail receipt confirming that the Tenant was served the Notice by registered mail sent on April 25, 2019. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served a copy of the Notice as of April 30, 2019.

The Tenant claimed they did not receive the Notice until “sometime in June”. In any event, the undisputed testimony before me is that the Tenant failed to apply to dispute the Notice within 10 days as required by section 47(4). As such, and pursuant to section 47(5) 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.

The Tenant claimed they were unaware of the requirement to apply to dispute the Notice. As discussed during the hearing, the Notice clearly informed the Tenant of this requirement in two separate sections on the Notice (for clarity I have copied these sections from the actual Notice provided in evidence) firstly on the top of the first page as follows:

Tenant: You may be EVICTED if you do not respond to this Notice.
TO the TENANT(s) (full names are required)
If additional space is required to list all parties, use and attach separate sheets.

and secondly on the second page as follows:

INFORMATION FOR TENANTS
- You have the right to dispute this Notice within 10 days after you receive it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch or at a Service BC Office. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice (you can move out sooner.) If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.
Note: The date a person receives documents is what is used to calculate the time to respond; the deeming provisions do not give you extra time to respond.

INFORMATION FOR LANDLORDS
- For repeated late rent payment, you can give this Notice any time after the third occurrence. However, if the occurrences were far apart, an arbitrator may decide that, in the circumstances, the tenant cannot be said to be in arrears.
- Take steps to confirm that the tenant has received this Notice.

As such, I find that the Tenant was informed of the requirement to apply to dispute the Notice, as well as the consequences of failing to do so.

Although the Tenant wished to dispute the allegations made by the Landlord at the hearing, they failed to make a formal application as required by the *Act*. The conclusive presumption in section 47(5) is non-rebuttable; consequently, I find the tenancy ended in accordance with the Notice.

Conclusion

The Tenant failed to apply to dispute the Notice as required by section 47(5) and is conclusively presumed to accept the end of the tenancy. As such, the Landlord's Application for an Order of Possession pursuant to section 55 of the *Act* is granted. This Order must be served on the Tenant and will be effective two days after service. Should the Tenant not vacate the rental unit as required, the Landlord may file and enforce the Order of Possession in the B.C. Supreme Court.

Having been successful in their application, the Landlord is also entitled to recover the filing fee pursuant to section 72 of the *Act*. I therefore authorize the Landlord pursuant to sections 38 and 72 to retain \$100.00 from the Tenant's security deposit as recovery of this amount. The balance of the Tenant's security deposit shall be dealt with in accordance with sections 38 and 39 of the *Act*.

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: July 3, 2019

Residential Tenancy Branch