



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on August 19, 2019. 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 to End Tenancy for Cause
- a monetary order for unpaid rent or utilities

The Landlord provided testimony at the hearing. The Tenant did not attend the hearing.

The Landlord testified that he served the Tenant, with the Notice of Hearing along with supporting documentary evidence on June 19, 2019, by posting it to the door of the rental unit.

I note that section 89 of the Act lays out certain service requirements for the Notice of Dispute Resolution, and the Notice of Hearing. Section 89(1) lays out acceptable ways that these documents must be served. Section 89(2) of the Act lays out other service requirements for applications which involve an order of possession.

Having considered the totality of the situation, I find the Landlord did not sufficiently serve the Tenant (by posting it to his door) such that I could hear his monetary claim for unpaid rent. That being said, I find the Tenant has been deemed served with the Notice of Hearing, on June 22, 2019, pursuant to section 90 of the Act but only to hear his application for an order of possession. In short, I find the Tenant has been served, as of June 22, 2019, with the Landlord's application and evidence, but since the application

was only posted to the door, and not in accordance with section 89(1) of the Act, I dismiss the monetary portion of the Landlord's application, with leave to reapply.

The Landlord was provided the 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 to be Decided

- Is the Landlord entitled to an order of possession under the *Act*?

Background and Evidence

The Landlord testified that he served the Tenant with a One Month Notice to End Tenancy for Cause (the Notice) on May 22, 2019, by posting a copy of this Notice to the front door. Service of this document was witnessed by a third party, as per the Proof of Service document.

The Notice indicates the reason for ending the tenancy is:

- Tenant is repeatedly late paying rent

The Landlord stated that the Tenant has fallen behind significantly on his rent, and now owes several thousands of dollars. More specifically, the Landlord stated that the last written tenancy agreement indicates that monthly rent is set at \$1,540.00 and is due on the first of the month. This agreement was signed over a year ago, but the Landlord stated that he has discussed signing a new rent payment schedule with the tenant to make it easier for him to pay rent, but nothing has been formalized or signed. The Landlord stated that as soon as the Tenant paid off what he owed in past due rent, sometime in February 2019, he stopped paying on time and in full.

The Landlord stated that the Tenant was late paying rent 3 times, as of the time the Notice was issued. The Landlord stated that the Tenant paid March rent late (partial rent of \$1,200.00 on March 21, 2019). The Landlord stated that the Tenant failed to make any rent payments for April or May of 2019. Subsequently, the Landlord served the Tenant with the Notice on May 22, 2019.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

In this case, the Landlord issued the Notice on the bases indicated above. Based on the Landlord's testimony and the Proof of Service document submitted with the Landlord's documentary evidence, I am satisfied that the Landlord served the Tenant with the Notice by posting it to his door on May 22, 2019. Pursuant to section 88 and 90 of the *Act*, this Notice is deemed served 3 days after it was posted, May 25, 2019. The Landlord issued this Notice for cause, under section 47(1) of the *Act*. As stated above, I find the Tenant is deemed to have received the Notice on May 25, 2019.

The Tenant had 10 days, until June 4, 2019, to dispute the Notice, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the end of the tenancy.

The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100.00 filing fee. I authorize the Landlord to retain \$100.00 from the Tenant's security deposit. The remainder of the deposit must be dealt with in accordance with the *Act*.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this

order the landlord may file the order with the Supreme Court of British Columbia and be 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: August 19, 2019

Residential Tenancy Branch