



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

On July 6, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "Act") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing with A.K. attending as an agent for the Landlord. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

The Landlord advised that the resident manager served the Notice of Hearing package to the Tenant by hand on July 8, 2019 and the Tenant confirmed that she received this package. Based on the undisputed testimony and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlord's Notice of Hearing package.

A.K. advised that she served evidence by registered mail to the Tenant on August 6, 2019 and the Tenant confirmed that she received this package. As service of this evidence complies with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that she served her evidence to the Landlord by putting it under the resident manager's door on August 19, 2019. The Landlord confirmed that she received this package, that she had reviewed it, and that she was prepared to respond to it. While service of this evidence did not comply with Section 88 of the *Act* or with the

timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Landlord was prepared to respond to it, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2019 and that rent was \$980.00 per month, due on the first of each month. A security deposit of \$500.00 was paid. A copy of the written tenancy agreement was submitted as documentary evidence for consideration. As an aside, I find it important to note that the Landlord collected a security deposit that exceeded what is permissible to be collected pursuant to Section 19 of the *Act*, as one collected greater than the equivalent of half of one month's rent is considered contracting outside of the *Act*. In future, a tenant may be permitted to withhold this excess from a future month's rent.

The Landlord advised that the resident manager posted the Notice to the Tenant's door on May 1, 2019. The reasons the Landlord served the Notice are because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord" and due to a "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The effective date of the Notice was June 4, 2019 but the Landlord was aware that this date was incorrect, and she provided written

acknowledgement that it would automatically self-correct to June 30, 2019 pursuant to Section 53 of the *Act*.

The Tenant confirmed that she received the Notice and that she did not dispute it. It was her belief that it was a “fake” Notice because it was served by the resident manager and not the Landlord.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on May 1, 2019, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was posted to the Tenant’s door on May 1, 2019. As per Section 90 of the *Act*, the Notice would have been deemed received by May 4, 2019. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“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 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.”*

After being deemed to have received the Notice, the tenth day fell on Tuesday May 14, 2019 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice. I find it important to note that the information with respect to the Tenant’s right to dispute the Notice is provided on the second page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice. As such, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective on **August 31, 2019 at 1:00 PM after service of this Order** on the Tenant.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective on **August 31, 2019 at 1:00 PM after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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: August 26, 2019

Residential Tenancy Branch