



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated July 26, 2019 ("1 Month Notice"), and to recover the cost of the filing fee.

Two agents for the landlord YB and RM ("agents") and a caretaker for the landlord MD ("caretaker"), the tenant and a support person for the tenant, appeared at the teleconference hearing. The parties gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that the landlord served the tenant with the Notice of Dispute Resolution Proceeding, application and documentary evidence. The tenant confirmed that they did not serve the landlord with any documentary evidence in response to the landlord's claim. I find the tenant was sufficiently served according to the *Act*.

Preliminary and Procedural Matter

The landlord confirmed their email addresses at the outset of the hearing. The tenant confirmed that they do not use email and would prefer the decision to be sent by regular mail. The parties were advised that decision would be emailed to the landlord and sent by regular mail to the tenant. Any orders will be emailed to the appropriate party for service on the other party.

Issue to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on July 1, 2008. A security deposit of \$205.00 was paid at the start of the tenancy.

The tenant confirmed being served with the 1 Month Notice on July 26, 2019 and did not dispute the 1 Month Notice. The tenant stated that they intended to dispute the 1 Month Notice at the hearing.

The 1 Month Notice is dated, signed, and includes two causes and the details of the two causes. The effective vacancy date listed on the 1 Month Notice is August 31, 2019. The agents testified that the tenant has paid for use and occupancy for the month of September 2019. The tenant continues to occupy the rental unit.

Analysis

Based on the documentary evidence of the parties and the testimony provided by the parties during the hearing, and on the balance of probabilities, I find the following.

Order of possession – As the tenant confirmed that they did not file an application to dispute the 1 Month Notice within 10 days after being served with the 1 Month Notice on July 26, 2019, I find the 1 Month Notice was undisputed by the tenant. The effective vacancy date of the 1 Month Notice is listed as August 31, 2019. Section 47 of the *Act* indicates that when a tenant does not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I find the tenancy ended on August 31, 2019. Contrary to the tenant's understanding of the *Act*, at the hearing is not the time to dispute the 1 Month Notice as the timeframe to dispute the hearing expired on August 5, 2019, which was 10 days after July 26, 2019.

I also note that the 1 Month Notice complies with section 52 of the *Act*. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Based on the above, I grant the landlord an order of possession pursuant to section 55 of the *Act* effective **September 30, 2019 at 1:00 p.m.** I have used this date as the parties confirmed that money for use and occupancy for September 2019 has been paid by the tenant.

As the landlord's application was successful, I authorize the landlord to retain **\$100.00** from the tenant's security deposit of \$205.00, which has accrued \$1.55 in interest for a total of \$206.55, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. I find the tenant's security deposit balance is now \$106.55 effective immediately pursuant to sections 38, 67 and 62(3) of the *Act*.

Conclusion

The landlord's application is fully successful. The tenancy ended on August 31, 2019

The landlord has been granted an order of possession effective September 30, 2019 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenant's security deposit of \$206.55, which includes interest, in full satisfaction of the recovery of the cost of the

filing fee pursuant to section 72 of the *Act*. The tenant's new security deposit balance is \$106.55.

The decision will be emailed to the landlord and sent by regular mail to the tenant. The order of possession will be emailed to the landlord for serve on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 23, 2019

Residential Tenancy Branch