



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOLTERRA HARO STREET
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On July 24, 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*.

R.R. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing. All in attendance provided a solemn affirmation.

R.R. advised that the Notice of Hearing and evidence package were served to the Tenant by registered mail on August 2, 2019 (the registered mail tracking number is on the first page of this decision). Based on this testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing package and evidence five days after it was mailed.

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.

R.R. advised that the tenancy started on January 11, 2019 and that rent was established at an amount of \$780.00 per month, due on the first day of each month. A security deposit of \$390.00 was paid. A copy of the tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served to the Tenant by posting it on the Tenant's door on June 17, 2019 and a signed proof of service form was submitted into evidence to corroborate this. The reasons the Landlord served the Notice are because the "Tenant is repeatedly late paying rent" and the "Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk." As well, the Landlord also served the Notice because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant." Finally, the Landlord served the Notice because the "Tenant has caused extraordinary damage to the unit/site or property/park." The effective end date of the Notice was June 19, 2019.

The Tenant did not make an Application to cancel the Notice.

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 June 17, 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 Landlord's evidence is that the Notice was served on June 17, 2019 by being posted on the Tenant's door, and a signed proof of service form corroborated this. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted on the door. 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 receive the Notice, the tenth day fell on Sunday June 30, 2019 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by Tuesday July 2, 2019. 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 and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that prevented him from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

With respect to the reasons on the Notice, R.R. advised that the Tenant has thrown feces and urine on other tenants of the building, that he left his water running and flooded other units in the building, that he caused a substantial fire, and that an acquaintance of his has been breaking into other tenants' property. He submitted complaint letters, as documentary evidence, to support this position.

Based on the conclusive presumption and R.R.'s evidence, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in his 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, if he chooses.

Conclusion

I grant an Order of Possession to the Landlord effective **two days 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: September 26, 2019

Residential Tenancy Branch