



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord's agent. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on August 16, 2019. Canada Post tracking information was submitted in the landlord's evidence. Based on the submissions of the landlord, I find the tenant was deemed served notice of this proceeding on August 21, 2019, pursuant to sections 89 and 90 of the *Act*. Therefore, I continued in the absence of the tenant.

Issues(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

Background and Evidence

The landlord's agent gave the following testimony. Monthly rent is set at \$2000.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1000.00 security deposit and \$1000.00 pet deposit. The agent testified that the tenant has been late in paying the rent for the months of April 2019 – October 2019, inclusive. The agent testified that the tenant has not paid the rent for the month of

October. The agent testified that a One Month Notice to End Tenancy for Cause was issued to the tenant on July 20, 2019 for the following reason:

Tenant is repeatedly late paying rent.

The agent provided undisputed sworn testimony supported by written evidence that the tenant was late in paying the rent on at least three successive occasions, and in this case; it has been 7 consecutive months.

Analysis

The agent noted that that the tenant did not apply to dispute the notice and has cut off all communication. Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file their application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Based on the above, the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, August 31, 2019.

I have also considered the following:

Landlord's notice: cause

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

(b) the tenant is repeatedly late paying rent;...

The landlord needs only demonstrate that one of the reasons identified in the 1 Month Notice is valid in order to end a tenancy for cause. In this case, the landlord has submitted undisputed evidence that the tenant paid rent late on at least three successive occasions from April to September 2019; in this case 7, and October still has not been paid.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late...

For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the 1 Month Notice for the tenant's late payment of rent. The tenant not only failed to apply to dispute the notice, but the landlord provided extensive documentation to support the issuance of the notice. Based on all of the above, I find that the landlord is entitled to an Order of Possession in accordance with section 55 of the *Act*.

The landlord is also entitled to retain \$100.00 from the security deposit in full satisfaction for the recovery of the filing fee. The agent inquired about the unpaid rent for October and was advised as that matter was not applied for the landlord is at liberty to make a separate application to address that matter.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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: October 11, 2019

Residential Tenancy Branch