



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that she only became aware of the matter two days ago when she returned from China. The tenant testified that she has been away from July 16 or 17, 2019 to October 16, 2019. The tenant testified that she only received an e-mail notification from the tenancy branch regarding the hearing. The tenant testified that she and her husband (co-tenant T.L. named on the tenancy agreement and this application) have separated already. The tenant testified that T.L. is not living in the rental unit anymore and he is back in China.

The landlord testified that on August 27, 2019 a copy of the Application for Dispute Resolution and Notice of Hearing was sent to both tenant's by registered mail. Registered mail receipts and tracking numbers were provided in support of service. The landlord testified that both packages were returned unclaimed. The landlord testified they subsequently posted copies of the application on the door and deposited copies directly into the mailbox at the rental unit.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The tenant failed to present any evidence in support of being away until only 2 days before the hearing. The tenant also failed to

present any evidence she notified the landlord she was going to be away and provided an alternative address or contact information for service.

The hearing proceeded as scheduled.

Issues

Is the landlord entitled to an order of possession pursuant to a One Month Notice to End Tenancy for Cause (the One Month Notice)?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on June 22, 2019. The current monthly rent is \$5000.00 payable on the 1st day of each month.

The property manager E.L. testified that on July 17, 2019 he personally served the tenant T.L. with the One Month Notice. A Proof of Service form of the Notice to End Tenancy was provided on file which the tenant T.L. refused to sign. The effective date of the One Month Notice was August 16, 2019, which is automatically corrected to August 31, 2019 pursuant to section 53 of the Act. The One Month Notice was issued on the grounds that the tenant has sublet the rental unit without the written consent of the landlord.

The tenant W.M. testified that she was not aware of the One Month Notice being served to the tenant T.L. W.M. testified that she was away at the time.

Analysis

Based on the testimony of the property manager E.L. I am satisfied that the tenant T.L. was personally served with the One Month Notice on July 17, 2019. Even though T.L. and W.M. have allegedly separated, T.L. was and still is a legal party to the tenancy agreement.

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If, as in the present case, the tenant does not make an application for dispute within ten days, the

tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice.

I find that the One Month Notice complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. This amount can be retained from the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants 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 18, 2019

Residential Tenancy Branch