



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY
ASSOCIATION 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* (the Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated August 15, 2019 (1 Month Notice), and to recover the cost of the filing fee.

An agent for the landlord LS (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated September 16, 2019 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail to the tenant at the rental unit address on September 16, 2019. The Canada Post registered mail tracking number was submitted in evidence and has been included on the cover page of this decision and marked as 1.

Preliminary and Procedural Matter

The agent confirmed their email address during the hearing. They also confirmed that they are not aware of the tenant's email address. The agent was advised that the decision and any related orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

Issues 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

The agent stated that the tenant paid a security deposit of \$235.00 at the start of the tenancy in June 2016, which has accrued \$0.00 in interest. The landlord continues to hold the tenant's security deposit.

The agent confirmed service of the 1 Month Notice by registered mail on the tenant at the rental unit address on August 15, 2019. A Canada Post registered mail tracking number with receipt was submitted in evidence. The second registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference has been marked as 2. According to the online Canada Post registered mail tracking website, the tenant signed for and accepted the second registered mail package on August 23, 2019. As a result, I find the tenant was served with the 1 Month Notice as of August 23, 2019.

The agent stated that the landlord has not been served with any application from the tenant disputing the 1 Month Notice. On the 1 Month Notice, the landlord alleges one cause on page 2, which states repeated late payment of rent. In the details of dispute, the landlord writes that the tenant has not paid the full amount of rent on time since December 2018. The agent also testified that as of the date of the hearing, November 18, 2019, the tenant continues to owe \$15.00 in unpaid rent.

The agent stated that the landlord would be willing to accept an order of possession effective November 30, 2019 at 1:00 p.m. The effective vacancy date listed on the 1 Month Notice was September 30, 2019, which has passed. The tenant continues to occupy the rental unit.

Analysis

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

Order of possession – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was September 30, 2019. As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **November 30, 2019 at 1:00 p.m.** I have used this date as the agent stated the landlord would accept an order of possession for that date and time, versus a two-day order of possession.

In addition, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act. I also accept the agent's undisputed testimony that the tenant has not paid full rent on time since December 2018, which I note far exceeds the requirement of three late payments of rent according to Residential Tenancy Branch Policy Guideline 38, which states in part:

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

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

...

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100.00 from the tenant's security deposit of \$235.00 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's new security deposit balance is \$135.00 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is fully successful. The tenancy ended on September 30, 2019. The tenant has been overholding the rental unit since September 30, 2019.

The landlord is granted an order of possession effective November 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 pursuant to section 67 and 72 of the Act, to retain \$100.00 from the tenant's security deposit of \$235.00 in full satisfaction of the recovery of the cost of the filing fee. The tenant's new security deposit balance is \$135.00 effective immediately, pursuant to section 62(3) of the Act.

The decision and order will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve the order of possession 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: November 18, 2019

Residential Tenancy Branch