



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT
COMMISSION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MT
 MNDCL, OPC, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant applied to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and for an extension of time to dispute the notice. The Landlord applied for monetary compensation, for an Order of Possession based on the One Month Notice, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant. The Landlord was affirmed to be truthful in her testimony and confirmed that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail. The Landlord submitted registered mail tracking information into evidence which shows that the package was mailed on October 18, 2019 and was returned to the Landlord after it was unclaimed. Despite not claiming the mail, I find that the Tenant was served in accordance with Section 89 of the *Act* and is deemed to have received the mail 5 days after it was sent pursuant to Section 90 of the *Act*.

The Landlord stated that they did not receive the notice of hearing documents or any evidence regarding the Tenant’s application but were aware of the Tenant’s application due to an email from the Residential Tenancy Branch when the files were joined to be heard together.

As the Tenant did not serve the notice of hearing documents to the Landlord and did not attend the hearing, the Tenant’s application is dismissed, without leave to reapply.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Landlord applied for compensation in the amount of \$360.00 for November 2019 rent. However, at the hearing the Landlord stated that November 2019 rent had since been paid and therefore they were withdrawing their monetary claim. As such, pursuant to Section 64(3)(c) of the *Act*, I amend the application to remove the claim for compensation.

Issues to be Decided

Is the Landlord entitled to an Order of Possession on the One Month Notice?

Should the Landlord be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on December 15, 2016. Rent in the amount of \$360.00 is due on the first day of each month. No security deposit was required.

The Landlord testified that they served the Tenant with a One Month Notice on August 27, 2019 by posting the notice on the Tenant's door. A copy of the One Month Notice dated August 26, 2019 was submitted into evidence and states the following as the reason for ending the tenancy:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Further details were provided on the One Month Notice as follows:

After being advised multiple times in writing the building is smoke free the tenant continues to smoke and is in breach of the tenancy agreement.

The Landlord submitted into evidence breach letters sent to the Tenant regarding issues with smoking in the rental unit as well as a smoke-free addendum to the tenancy agreement which was signed by the Landlord and Tenant on December 6, 2016.

The Landlord stated that the Tenant has been seen smoking in the rental unit and has also admitted to doing so. She noted that this is a smoke-free building and that smoking in the rental unit is disturbing other tenants.

Analysis

I accept the testimony of the Landlord that the Tenant was served with the One Month Notice on August 27, 2019 when the notice was posted on the Tenant's door. Pursuant to the deeming provisions of Section 90 of the *Act*, I find that the Tenant is deemed to have received the One Month Notice three days later on August 30, 2019.

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. The Tenant applied to dispute the One Month Notice on September 24, 2019 which is well beyond the 10 days allowable. Although the Tenant applied for an extension of time, the Tenant did not attend the hearing based on their application and their application was dismissed.

Therefore, as I find that the Tenant did not apply within the 10 days allowable and was not granted an extension of time to dispute the notice, Section 47(5) of the *Act* applies as follows:

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

As the Tenant is conclusively presumed to have accepted that the tenancy ends, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55 of the *Act*. Upon review of the One Month Notice I find that the form and content comply with

Section 52 of the *Act* and therefore I award the Landlord an Order of Possession effective November 30, 2019.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is granted a Monetary Order in this amount.

Conclusion

The Tenant's application is dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act* I grant an Order of Possession to the Landlord effective **November 30, 2019 at 1:00 pm**. This Order must be served 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.

Pursuant to Section 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$100.00** for the recovery of the filing fee paid for the application. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: November 19, 2019

Residential Tenancy Branch