



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 for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The landlord was present and represented by their lawyer. The tenant did not participate in the teleconference. The landlord provided documentary evidence and Canada Post tracking slips to show that the tenant was served notice of this hearing by registered mail on October 11, 2019. The landlord provided documentation to show that the item was unclaimed by the tenant. Based on the above, I am satisfied that the landlord acted in accordance with section 89 of the Act, accordingly; I proceeded and completed the hearing on that basis.

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?

Background and Evidence

Counsel for the landlord provided the following information and submissions. The tenancy began on March 1, 2018 with a monthly rent of \$1350.00 due on the first of each month. The tenant paid a security deposit of \$675.00 which the landlord still holds. Counsel submits that the tenant has been late in paying the rent 13 of the last 15 months. Counsel submits that the tenants ongoing aggressive, disrespectful and threatening demeanour has caused the landlord a significant cause of stress and

concern. The landlord issued a One Month Notice to End Tenancy for Cause on September 19, 2019 by registered mail. The tenant refused service and has cut off all communication with the landlord. The landlord's 1 Month Notice cited the following two reasons for seeking an end to this tenancy for cause.

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord requests an order of possession and the recovery of the filing fee.

Analysis

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*. In addition to failing to dispute the notice, I have 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:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

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 13 of the last 15 months of the tenancy. The landlord provided extensive documentation to support their position.

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...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenant has been late in paying their rent on at least three occasions in the past twelve months, and in this case, 13 of the last 15 months. Section 26(1) of the *Act* requires rent to be paid when it is due.

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. As section 47 of the *Act* only requires that one of the reasons cited in a 1 Month Notice are valid, I have not considered the landlord's secondary reason for seeking an end to this tenancy.

I find that the landlord's 1 Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. Based on all of the above, the landlord is granted an Order of Possession in accordance with section 55(1) of the *Act*. As the tenant has paid the rent for the month of November, the order of possession will take effect at 1:00 p.m. on November 30, 2019.

The landlord is entitled to retain \$100.00 from the security deposit to recover the cost of filing this application.

Conclusion

I grant an Order of Possession to 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: November 15, 2019

Residential Tenancy Branch