



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 11, 2019, in which the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on September 17, 2019 (the "Notice") and to recover the filing fee.

The hearing was conducted by teleconference at 11:00 a.m. on November 19, 2019. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?

2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's Agent testified that this tenancy began June 1, 2018.

The Agent stated that a fire in the rental unit was reported to the Landlord on September 24, 2019. The fire resulted in flooding as a result of the sprinkler system. The Agent stated that the neighbours also alleged the Tenant was engaged in illegal activity.

The Notice was issued on September 27, 2019. The Agent stated it was served on the Tenant by posting to the rental unit door on September 27, 2019. The reasons cited on the Notice are as follows:

the Tenant or a person permitted on the residential property by the Tenant has

- put the landlord's property at significant risk;

the Tenant has engaged in illegal activity that has caused or is likely to

- damage to the landlord's property,
- has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- jeopardize or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

the Tenant has caused extraordinary damage to a rental unit or residential property;

The Agent confirmed that the Tenant has not applied to dispute the Notice.

The Tenant testified as follows. She confirmed that she received the Notice but was not able to apply to dispute the Notice for financial reasons. She confirmed that she did not apply for a fee waiver.

For reasons which will be set out in the Analysis section I did not need to hear the Tenant's response to the specific allegations made on the Notice.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

Section 47 of the *Act* allows a Landlord to end a tenancy for cause and reads as follows:

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

- (a)the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b)the tenant is repeatedly late paying rent;
- (c)there are an unreasonable number of occupants in a rental unit;
- (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,
 - (ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii)put the landlord's property at significant risk;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i)has caused or is likely to cause damage to the landlord's property,
 - (ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j)the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l)the tenant has not complied with an order of the director within 30 days of the later of the following dates:

(i)the date the tenant receives the order;

(ii)the date specified in the order for the tenant to comply with the order.

(2)A notice under this section must end the tenancy effective on a date that is

(a)not earlier than one month after the date the notice is received, and

(b)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Landlord's Agent's testimony that the Notice was served on the Tenant by posting to the rental unit door on September 27, 2019. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later; as such I find the Tenant was served the Notice as of October 1, 2019.

As noted above, section 47(4) requires a Tenant to apply to dispute a 1 Month Notice within 10 days of receipt of the Notice. Consequently, the Tenant was required to make an application by no later than October 11, 2019.

The undisputed evidence is that the Tenant failed to make such an application. As such, 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 Notice.

I find that the Notice complies with section 52 in terms of form and content. I need not consider the reasons the Notice was issued, as by operation of section 47(5) of the *Act* the tenancy is ending.

Pursuant to section 55 of the *Act* I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant failed to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession which will be effective two days after it is served on the Tenant. The Landlord must serve the Order on the Tenant and may, if necessary, file and enforce the Order in the B.C. Supreme Court. The Tenant is reminded that any costs the Landlord incurs to enforce the Order of Possession may be recoverable from her.

As the Landlord has been successful in his application, he is entitled to recover the filing fee. Pursuant to section 72 of the *Act* I authorize the Landlord to retain \$100.00 of the Tenant's security deposit; the balance of the deposit shall remain in trust and be dealt with in accordance with the *Residential Tenancy Act*.

This decision is final and binding on the parties, except as 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 20, 2019

Residential Tenancy Branch