



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASA RENTAL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

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 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The agents S.M. and H.L. attended to represent the housing society landlord and the corporate property management company acting as agent for the housing society landlord. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agents and I were the only ones who had called into this teleconference.

As only the landlord's agents attended the hearing, I asked the landlord's agent to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was sent the landlord's notice of this hearing by Canada Post registered mail on October 24, 2019 and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

As such, I find that the tenant was deemed served with the notice of this hearing five days after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the notice to end tenancy for cause? Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The landlord's agent provided the following testimony regarding the tenancy agreement:

- This tenancy began August 8, 2014.
- Monthly rent of \$375.00 is payable on the first of the month.
- The tenant paid a \$187.50 security deposit at the beginning of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of the One Month Notice to End Tenancy (One Month Notice) dated September 30, 2019 into evidence, which states an effective move-out date of November 30, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

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

The landlord provided additional information regarding the reasons for issuing the One Month Notice in the “Details of Cause” section of the Notice.

The landlord testified that the One Month Notice was served to the tenant by Canada Post registered mail on October 1, 2019 and provided a Canada Post registered mail tracking number as proof of service, which I have noted on the cover sheet of this decision.

The landlord’s agent testified that the landlord has not received any notice from the tenant that he is disputing the One Month Notice, and the time limit to dispute the Notice has now passed.

The landlord’s agent testified that around December 5, 2019, they performed a welfare check on the rental and it appeared that the tenant had abandoned the rental unit, however the landlord is requesting an Order of Possession to confirm that the landlord has regained possession of the rental unit.

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.

In this case, I accept the testimony of the landlord’s agent that the tenant was served the One Month Notice by Canada Post registered mail on October 1, 2019 as supported by the registered mail tracking receipt submitted into evidence by the landlord.

As such, I find that the tenant was deemed in receipt of the One Month Notice on October 6, 2019 in accordance with the deeming provisions of section 90 of the *Act* which set out that a document served by mail is deemed received on the fifth day after mailing.

Section 47(5) of the *Act* states that a tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice to end tenancy if the tenant fails to make an application for dispute resolution in accordance with section 47(4) of the *Act*.

I find no evidence before me that the tenant filed an application for dispute resolution within the ten days of receipt of the notice, as provided under section 47(4) of the *Act*.

Accordingly, I must consider if the landlord is entitled to an Order of Possession under section 55 of the *Act*, based on the fact the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice as provided by section 47(5) of the *Act*. In this case, the effective vacancy date of the notice was November 30, 2019.

For an Order of Possession to be granted to a landlord, sections 47(3) and 55 of the *Act* require that a landlord's notice to end tenancy for cause must comply with the form and content requirements of section 52 of the *Act*.

In considering this matter, I have reviewed the landlord's One Month Notice to determine if it is compliant with the requirements of section 52 of the *Act*. After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord or landlord's agent, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

As I have made a finding that the tenant is conclusively presumed to have accepted the tenancy ended on the effective vacancy date of the One Month Notice, and that the One Month Notice complies with section 52 of the *Act*, the landlord must be granted an Order of Possession. As the effective vacancy date of the One Month Notice has now passed, this Order of Possession will be effective two days after service upon the tenant by the landlord.

As the landlord was successful in their application, the landlord is entitled to recover the cost of the filing fee for the application from the tenant. The landlord may retain \$100.00 from the security deposit in full satisfaction of the recovery of the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective two days after service on the tenant.

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 or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord may retain \$100.00 from the security deposit in full satisfaction of the recovery of the Application filing fee.

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: December 10, 2019

Residential Tenancy Branch