



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CKL INVESTMENTS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, further to having served the Tenant with a One Month Notice to End Tenancy for Cause, dated October 5, 2019 ("One Month Notice"). The Landlord also seeks recovery of their \$100.00 Application filing fee.

Two agents, A.G. and J.G., for the Landlord (the "Agents") appeared at the teleconference hearing and gave affirmed testimony. However, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 19 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing, the Agents were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served the Tenant with the Notice of Hearing documents by Canada

Post registered mail, sent on October 25, 2019. The Agents provided a Canada Post tracking number to support their evidence in this regard. Upon checking the Canada Post tracking guide, I discovered that the Tenant refused to accept the package on October 28, 2019.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find the Agents served the Notice of Hearing on the Tenant on October 30, 2019, in accordance with section 89 of the Act.

Preliminary and Procedural Matters

At the outset of the hearing, the Agents confirmed their email address that was provided in the Application, and confirmed their understanding that the Decision would be emailed to them and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover of the \$100.00 Application Filing Fees?

Background and Evidence

The Agents said that the periodic tenancy began on October 1, 2015, with a monthly rent of \$900.00, due on the first day of each month, and that the current rent is \$984.00. The Agents said that the Tenant paid the Landlord a security deposit of \$445.00, and no pet damage deposit.

The Agents said the Tenant was late paying his October 2019 rent, so they served him with a One Month Notice on October 5, 2019, by posting it on the rental unit door. The One Month Notice had an effective vacancy date of November 8, 2019.

The Agents said the Tenant has a history of paying his rent late. They said this also occurred in June 2016, April 2018, June 2018, October 2018, and December 2018. In

addition, the Tenants said the Tenant refused a rent increase that was in an amount authorized by the *Residential Tenancy Act* Regulation for 2019. However, the Landlords said that when the Tenant did pay his full rent in October 2019, after he was served with a 10 Day Notice to End Tenancy for Unpaid Rent.

There is no evidence before me that the Tenant disputed the One Month Notice.

Analysis

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

Pursuant to section 90 of the Act, I find that the Tenant was deemed served with the One Month Notice on October 8, 2019, three days after it was posted to the door of the rental unit.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The One Month Notice states that the effective date of the notice is November 8, 2019; however, given the date the One Month Notice was deemed served and the date upon which rent is due under the tenancy agreement, I find that this date does not comply with the minimum notice period required under section 47(2) of the Act. As a result, I find that the effective date of the One Month Notice is automatically corrected to November 30, 2019, pursuant to section 53 of the Act.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on November 30, 2019. As a result, I find that the Tenant is overholding the rental unit and the Landlord is, therefore, entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the corrected effective date has passed, and the Agent testified that rent for December 2019 has been paid, the Order of Possession will, therefore, be effective on December 31, 2019, after service on the Tenant.

I also find that the Landlord is entitled to recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, which they are authorized to deduct from the Tenant's security deposit.

Conclusion

The Landlord is successful in this Application, as the Tenant breached the Act and tenancy agreement by repeatedly paying his rent late. Further, the Tenant did not dispute the One Month Notice, therefore, he is conclusively presumed to have accepted the end of the tenancy, pursuant to section 47(5) of the Act.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective on December 31, 2019 at 1:00 p.m., **after service of this Order** 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 fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the Act, I grant the Landlord a monetary award in the amount of \$100.00. The Landlord is authorized to retain \$100.00 from the Tenant's security deposit in satisfaction of this award.

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