



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFT

Introduction

In this dispute, the landlords sought an order of possession for cause pursuant to sections 47 and 55 of the *Residential Tenancy Act* (the “Act”), and recovery of the filing fee pursuant to section 72 of the Act. (I note that the initial application did not include a request for recovery of the filing fee; I permitted the landlords’ request to amend their application at the hearing to include a claim for the filing fee.)

The landlords applied for dispute resolution on October 30, 2019 and a dispute resolution hearing was held on Tuesday, December 17, 2019 at 9:30 AM. Both landlords attended the hearing, were given a full opportunity to be heard, to testify, to make submissions, and call witnesses. The tenant did not attend.

The landlords testified that they served the Notice of Dispute Resolution Proceeding on the tenant by way of attaching it to the door of the rental unit on or shortly after October 30, 2019. Based on the testimony of the landlords I find the tenant was served the Notice of Dispute Resolution Proceeding in compliance with subsections 59(3) and 89(2)(d) of the Act.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Whether the landlords are entitled to an order of possession for cause.
2. Whether the landlords are entitled to recovery of the filing fee

Background and Evidence

The landlords testified that the tenancy started about eight or nine years ago, and that monthly rent is \$959.40; there is no security or pet damage deposit. There is a written tenancy agreement, but the tenant has so far refused to sign it.

On October 2, 2019, the landlord (“S.”) served a One Month Notice to End Tenancy for Cause (the “Notice”) on the tenant by way of attaching it to the door of the rental unit. The Notice – a copy of which was submitted into evidence – indicated that the tenancy was ending effective November 30, 2019.

The reason for the tenancy ending, indicated on page 2 of the Notice, is that there occurred a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The details of cause section of the Notice explained that the tenant was required to provide a copy of a key to the landlords but failed to do so despite being given a week to provide a copy of the key.

The landlords also provided some brief background regarding the issues they have had with the tenant over the course of the tenancy. However, while these issues no doubt led to and exacerbated the issues, the details are not directly germane to my making a decision about granting an order of possession.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In this case, the onus is on the landlords to prove that they are entitled to an order of possession under the Act.

Section 47 of the Act covers the reasons why a landlord may end a tenancy. Subsection 47(5)(h) of the Act states that

(1) A landlord may end a tenancy by giving notice to end the tenancy if [. . .]

(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;

Moreover, subsection 47(5) of the Act states that

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.

In this case, the landlords submitted that a material term of the tenancy is that the tenant was required to provide a copy of a key to the rental unit. The tenant failed to do so. As a result, the Notice was issued. I find that the Notice was issued in compliance with the Act and find that it conforms to section 52 of the Act. Further, as the tenant did not make an application for dispute resolution, he is conclusively presumed to have accepted that the tenancy ended on November 30, 2019.

Subsection 55(2)(b) of the Act states that

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired [. . .]

Here, the Notice has been given by the landlords, the tenant has not disputed the Notice, and the time for making that application has now expired.

Taking into consideration all the undisputed testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for an order of possession and I thus grant an order of possession under subsection 55(3) of the Act.

An order of possession is issued in conjunction with this Decision.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful, I grant their claim for recovery of the filing fee. A monetary order in the amount of \$100.00 is thus issued in conjunction with this Decision.

Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, Small Claims Division.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 17, 2019

Residential Tenancy Branch