



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LAMPLIGHTER APARTMENTS
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; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the landlord's resident manager and the landlord's area manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the tenant was personally served with the landlord's application for dispute resolution on November 13, 2019. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,435.00 is payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The resident manager testified that on October 13, 2019 the tenant was personally served with a One Month Notice to End Tenancy for Cause with an effective date of November 15, 2019 (the "One Month Notice"). A witnessed proof of service document confirming the resident manager's testimony was entered into evidence. The tenant testified that he received the One Month Notice but could not recall on what date.

The tenant testified that he filed to dispute the One Month Notice on December 17, 2019. The tenant provided a file number for the above dispute which is noted on the cover page of this decision. The Residential Tenancy Branch system shows that the tenant applied for dispute resolution on December 19, 2019.

The One Month Notice stated the following reasons for ending the 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.

The resident manager testified that it was discovered in November of 2018 that the tenant had bedbugs. The subject rental property was subsequently treated by an exterminator and it was recommended that the tenant's mattress, box spring and couch be removed to contain the infestation. An exterminator report dated November 8, 2018 stating same was entered into evidence. The resident manager testified that the tenant

did not remove his mattress, box spring and couch which resulted in the return of the bedbug infestation in September of 2019.

The tenant testified that his mattress, box spring and couch all had bedbug covers so he did not follow the exterminator's instructions to remove them.

The resident manager testified that the tenant's failure to follow the exterminator's recommendation resulted in a re-infestation of the subject rental property which spread to the rental units on either side, above and below the subject rental property in September of 2019. The resident manager testified that the exterminator company re-attended and again informed the landlord and the tenant that household items, including a couch must be properly wrapped and disposed of in order for the bedbug treatments to be effective. A letter from the exterminator dated October 4, 2019, confirming the above testimony was entered into evidence.

The resident manager testified that the ministry hired a company to remove the infected furniture, but the tenant refused to allow them to remove the couch which was heavily infested with bedbugs. The landlord entered into evidence photographs of the tenant's couch taken in November of 2019 showing bed-bug activity. The tenant testified that he did remove the original couch and that the photographs entered into evidence by the landlord were of his new couch. The tenant testified that he followed all the requested actions recommended by the landlord and exterminator during the 2019 outbreak.

The area manager testified that the tenant has failed to take the bedbug infestation seriously by failing to remove the infested items in 2018 and 2019 as the extermination company recommended. The area manager testified that the tenant's actions have caused expense to the landlord as the landlord has had to pay for many bed bug treatments and has greatly interfered with his neighbours who continuously have to deal with bedbugs because of the tenant's non-compliance.

Analysis

Based on the resident manager's testimony and the witnessed proof of service document entered into evidence, I find that service of the One Month Notice was effected on the tenant on October 13, 2019 in accordance with section 88 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47 of the *Act* is November 30, 2019. I find that the corrected effective date of the One Month Notice is November 30, 2019.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application 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.

In this case, the tenant did not dispute the One Month Notice within 10 days of receiving it. The tenant had 10 days from the receipt of the One Month Notice to file with the Residential Tenancy Branch to dispute the One Month Notice. 10 days from October 13, 2019, when the tenant received the One Month Notice, was October 23, 2019. The tenant filed his application to dispute the One Month Notice on December 19, nearly two months late. It is the tenant's responsibility to dispute a notice to end tenancy within the required time periods.

I find that, pursuant to section 47 of the *Act*, the tenant's failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2019. As this has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. 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: January 02, 2020

Residential Tenancy Branch