



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RIVERS INLET ENTERPRISES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

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 section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant, M.P. attended the hearing and provided undisputed affirmed testimony. The tenant, M.M.P. did not attend and was unrepresented. The landlord stated that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 11, 2019. The tenant confirmed that she received the package as detailed by the landlord. The landlord also stated that the tenant, M.M.P.'s package was accepted and signed for after reviewing the Canada Post Customer Tracking system. The landlord submitted a copy of the Canada Post Customer Receipt and Tracking labels for both packages. The tenant, M.P. stated that she did not submit any documentary evidence. The landlord stated that no documentary evidence was received from either tenant(s).

I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per sections 88 and 89 of the Act. Although the tenant, M.M.P. did not attend, I deem them all parties are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2019 on a fixed term tenancy ending on October 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated May 1, 2019. The monthly rent is \$960.00 payable on the 1st day of each month. A security deposit of \$435.00 was paid previously.

Both parties confirmed in their direct testimony that the tenant, M.P. had vacated the rental unit on December 18, 2019, but that the tenant, M.M.P. still occupies the premises.

Both parties confirmed that on November 4, 2019, the landlord served the tenant with the 1 Month Notice dated November 4, 2019 by posting it to the rental unit door. The 1 Month Notice sets out an effective end of tenancy date of December 4, 2019 and that it was being given as:

- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk.

The details of cause state:

4 people are living in a 1 bedroom apartment (2 adults & 2 kids) place is too small for them. During the past 2 years, tenant has been given written notices and verbal warnings regarding the noise they make in the apartment early in the morning and late on weekdays and also late at night on the weekends after 11pm up until 1:30am. They talk very loud, scream and don't care about the neighbours needing to sleep. In summer time they always use a charcoal BBQ knowing that it's a fire hazard and it's not allowed.

The landlord clarified that the main reason for the notice for cause is the repeated noise from the tenants which has affected their neighbours.

During the hearing, the tenant, M.P. confirmed receipt of the notice as claimed by the tenant. The tenant stated that she understood the reasons on the notice and confirmed that she has not filed an application for dispute of the notice. The tenant, M.P. stated that she is unaware of any application for dispute filed by the co-tenant, M.M.P.

The landlord stated that at no time has the landlord been served with a notice of hearing for an application to dispute the 1 month notice by either of the tenants.

Analysis

Section 47 (4) states in part that a tenant may dispute a notice under this section by making an application for dispute within 10 Days after the date the tenant receives the notice. In this case, both the landlord and the tenant, M.P. confirmed that the tenants received the 1 month notice dated November 4, 2019 posted to the rental unit door. The tenant, M.P. stated that she did not file an application for dispute nor is she aware of the tenant, M.M.P. filing an application for dispute. This is supported by the landlord who has provided undisputed affirmed testimony that the landlord has not been served with an application for dispute of the 1 month notice.

Pursuant to section 47 (5) states in part that if a tenant who has received a notice under this section does not make an application for dispute resolution under 47(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date the notice and must vacate the rental unit. On this basis, the landlord's application is granted. The 1 month notice dated November 4, 2019 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants as the effective end of tenancy date of the notice has now passed.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order of \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 17, 2020

Residential Tenancy Branch