



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 43 Housing Society
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.

Both parties 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 agree that the landlord served the tenant with the landlord's application for dispute resolution via registered mail and that the tenant received the landlord's application on January 17, 2020. 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 December 1, 2018 and is currently ongoing. Monthly rent in the amount of \$510.00 is payable on the first day of each month. A security deposit of \$400.00 was paid by the tenant to the landlord. The subject rental property is housing subsidized by BC Housing.

The housing coordinator testified that on August 27, 2019 a One Month Notice to End Tenancy for Cause with an effective date of October 2, 2019 (the "One Month Notice") was posted on the tenant's door. The landlord entered into evidence a witnessed proof of service document confirming same. The tenant confirmed receipt of the One Month Notice but could not recall on what date.

The One Month Notice states the following reason for ending the tenancy:

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

The housing coordinator testified to the following facts. The tenant was granted the two-bedroom townhouse based on his application for subsidized housing which stated that he and his son would be living at the subject rental property but that the tenant's son never moved in. The landlord provided the tenant with ample time both before and after the One Month Notice was served to have his son move into the subject rental property to enable the continuation of this tenancy. The subject rental housing is needed to house a larger family.

The tenant testified that when he made the application for subsidized housing, he planned on having his son move in with him but once his son realized that moving in would mean he had to change schools, he stopped speaking with the tenant and refused to move in.

The tenant testified that he did not file an application with the Residential Tenancy Branch to cancel the One Month Notice.

Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenant on August 30, 2019, three days after its posting, in accordance with section 88 and 90 of the *Act*.

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. 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 effective date of the notice. As the effective date of the One Month Notice has already passed, I find that the landlord is entitled to an Order Possession effective at 1:00 p.m. on March 31, 2020. 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 by 1:00 p.m. on March 31, 2020, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in their application, I find that they are 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 at **1:00 p.m. on March 31, 2020**, which should be served 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.

Pursuant to section 72 of the *Act*, the landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: March 12, 2020

Residential Tenancy Branch