



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Action Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on March 9, 2020 seeking an order of possession for the rental unit, and to recover the money for the Application filing fee. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 9, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The Applicant landlord attended the telephone conference call hearing; the Respondent tenant did not attend.

The landlord provided testimony that they forwarded notice of this dispute and their evidence to the tenant via registered mail, to the rental unit on March 18, 2020. The landlord checked their record during the hearing and verified that the tenant did not pick up the mail after it was out for delivery.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served to the tenant, in a manner allowed under Section 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that the address they provided on the registered mail was that of the rental unit, still occupied by the tenant at the time of its mailing. The tenant did not provide a forwarding address, nor did they notify the landlord that they were moving out.

Based on these submissions of the landlord, I find the tenant was deemed to have been served on March 23, 2020, five days after the landlord sent the hearing information via registered mail. This is allowed by section 90(a) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the residential tenancy agreement that was signed by the landlord and the tenant on February 22, 2012. The tenancy began on March 1, 2012 with the rent amount being \$725.00, payable on the first of each month. The rent increased to \$787.00 in July 2015. At the start of the tenancy, a security deposit was paid, and a pet damage deposit was paid, at \$365.00 each.

The landlord submitted as evidence a copy of the One Month Notice to End Tenancy for Cause (the "One Month Notice") dated January 13, 2020, stating the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk, has not completed repairs of damage, and has breached a material term of the tenancy. The One Month Notice provides that the tenant had ten days from the date of service to apply for Dispute Resolution or the tenancy would end effective February 29, 2020.

The copy of the Proof of Service of Notice to End Tenancy indicates that the One Month Notice was posted to the tenant's door on January 13, 2020, at 2:25 p.m. A witness provided their name and signature to state they observed the landlord attach the One Month Notice to the door.

The landlord gave testimony that covered details on the state of the unit and attempts to enter. Most important was the attempt to repair the smoke detector for annual maintenance. The tenant had multiple warnings and request to clean the unit, involving pets and hazards present within the unit. The amount of clean up necessary interrupts the ability to enter the unit in the event of an emergency, placing the property of the landlord at significant risk.

A picture submitted by the landlord shows the state of the unit in question. The landlord gave an account of their attempt to enter the unit to inspect, and their entry blocked by an amount of debris that left opening the door to the unit virtually impossible.

The tenant did not attend the hearing. They did not submit documentary evidence to respond to reasons for the issuance of the One Month Notice.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - ii. Put the landlord's property at significant risk;
- f) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- 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;

Section 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Section 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the *Act*. Section 90 allows for a document posted to the door of the unit to be deemed received on the 3rd day after it is posted. In accordance with this, I find the tenant was deemed served with the Notice on January 16, 2020, three days after its posting.

I find that the tenants did not dispute the Notice within ten days, pursuant to section 47(4). I find that the tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with section 47(5).

I find the landlord has the authority to issue the Notice under section 47 of the *Act*. I grant the landlord's request for an Order of Possession under section 55 of the *Act*.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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*, I grant the landlord a Monetary Order in the amount of \$100.00 for recovery of the filing fee for this hearing application. 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 Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 27, 2020

Residential Tenancy Branch