



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to obtain an order of possession under section 55 of the Act based on an undisputed 1 Month Notice to End Tenancy for Cause dated January 10, 2020 (1 Month Notice), and to recover the cost of the filing fee.

An agent for the landlord SA (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated February 3, 2020 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail to the tenant at the rental unit address on February 6, 2020. The Canada Post registered mail tracking number was submitted in evidence and has been included on the cover page of this decision and marked as 1. According to the online Canada Post tracking website information, the registered mail package was processed on February 7, 2020 after two notice cards were left for the tenant, the package was eventually returned to sender and marked "unclaimed". According to the agent, the tenant continues to occupy the rental unit.

Given the above, and taking into consideration that section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed, I deem the tenant served with the Notice of Hearing, application and documentary

evidence as of February 11, 2020, which is five days after February 6, 2020. As the tenant did not attend the hearing, I consider this application to be undisputed by the tenant. The hearing proceeded without the tenant present as a result.

Preliminary and Procedural Matter

The agent confirmed their email address during the hearing. They also confirmed that they are not aware of the tenant's email address. The agent was advised that the decision and any related orders will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agent testified that the tenancy began on December 1, 2015. The agent testified that current monthly rent is \$1,100.00 per month and is due on the first day of each month. The agent stated that tenant paid a security deposit of \$500.00 at the start of the tenancy.

The agent confirmed service of the 1 Month Notice by registered mail on the tenant at the rental unit address on January 10, 2020 via registered mail. A Canada Post registered mail tracking number was provided. The second registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference has been marked as 2. According to the online Canada Post registered mail tracking website, the tenant did not pick up the registered mail and it was eventually returned to sender and marked as "unclaimed". Pursuant to section 90 of the Act, I find the tenant was deemed served as of January 15, 2020, with the 1 Month Notice.

There is no evidence before me that the tenant disputed the 1 Month Notice. On the 1 Month Notice, the landlord alleges one cause on page 2, which states repeated late payment of rent. In the details of dispute, the landlord states the specific months in which the tenant was late paying rent.

The agent stated that the landlord would be willing to accept an order of possession which is effective seven (7) days after service on the tenant. The effective vacancy date listed on the 1 Month Notice was February 29, 2020, which has passed. The tenant continues to occupy the rental unit, according to the agent.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the Act states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was February 29, 2020. As the tenant continues to occupy the rental unit, I find the tenant is overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective seven (7) days after service on the tenant. In addition, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act.

As the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100.00 from the tenant's security deposit of \$500.00 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's new security deposit balance is \$400.00 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is fully successful.

The tenancy ended on February 29, 2020. The tenant has been overholding the rental unit since that date.

The landlord is granted an order of possession effective seven (7) days after service on the tenant.

Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

The landlord has been authorized pursuant to section 67 and 72 of the Act, to retain \$100.00 from the tenant's security deposit of \$500.00 in full satisfaction of the recovery of the cost of the filing fee. The tenant's new security deposit balance is \$400.00 effective immediately, pursuant to section 62(3) of the Act.

The decision and order of possession will be emailed to the landlord. The decision will be sent by regular mail to the tenant. The landlord must serve the tenant with the order before enforcing the order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 6, 2020

Residential Tenancy Branch