



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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy for Cause dated December 30, 2019, the notice of application dated February 6, 2020 and evidence. The tenant said they had not served any evidence. Based on the testimonies I find that the tenant was served with all relevant materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in December 2019. Monthly rent is \$1,500.00 payable on the first of each month. The landlord testified that a security deposit of \$750.00 was payable at the start of the tenancy but the tenant failed to provide any deposit.

The landlord subsequently issued a 1 Month Notice to End Tenancy for Cause dated December 30, 2019. The reason provided on the 1 Month Notice for the tenancy to end is that the security deposit was not paid within 30 days as required by the tenancy agreement.

The tenant testified that there was an agreement with the landlord that in lieu of paying a deposit the tenant would do work, specifically cleaning the rental unit at the start of the tenancy. The tenant confirms that they have not paid the deposit nor have they filed an application to dispute the 1 Month Notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the corrected effective date of the 1 Month Notice, January 31, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I accept the evidence of the parties that no security deposit was paid for this tenancy. In weighing the opposing testimonies as to why a deposit was not paid, I find that the landlord's testimony that a security deposit in the amount of \$750.00 was owing at the start of the tenancy to be far more reasonable than the tenant's assertion that there was an agreement that they could simply do work in lieu of providing a deposit. While neither party provided documentary evidence in support of their respective positions, I find the landlord's testimony to be consistent and in accordance with what would be reasonable under the circumstances. I find the tenant's testimony that there was an arrangement to forego a payment of a deposit to have no air of reality.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

As the landlord's application was successful they are also entitled to recover the filing fee for this application from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$100.00. 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 *Residential Tenancy Act*.

Dated: April 16, 2020

Residential Tenancy Branch