



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The conference call hearing was set for 11:00 a.m. on this date. The Arbitrator called in to the hearing at the scheduled time. The line remained open while the phone system was monitored for the duration of the hearing that lasted 14 minutes. The only Party who called into the hearing during this time was the Landlord who was ready to proceed. It was confirmed that the correct call-in numbers and participant codes were provided in the notice of hearing to the Tenant. As the Tenant did not attend the hearing to pursue its application, I dismiss the application without leave to reapply. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order for possession?

Background and Evidence

The tenancy under written agreement started on May 1, 2016. Rent of \$1,555.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit. The Tenant has been late paying rent for 24

months out of the 48-month tenancy. In the past 6 months the Tenant paid its rent late in September, October and November 2019 and in February 2020. On February 27, 2020 the Landlord served the Tenant with a one month notice to end tenancy for cause by posting the Notice on the Tenant's door. The reason stated on the Notice is that the Tenant has been repeatedly late paying rent. The Notice does not include details for the reason. The form and content of the Notice provided as evidence by the Tenant is confirmed.

Analysis

Section 47(1)(b) of the Act provides that A landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent. Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Section 3(2) of the *Residential Tenancy (COVID-19) Order*, MO 89/2020 (*Emergency Program Act*) issued March 30, 2020 (the "Ministerial Order") provides that if a landlord gave a tenant a notice to end the tenancy under sections 46, 47, 48, 49 or 49.1 of the Residential Tenancy Act before the date of this order, then (a) the notice to end the tenancy remains in effect, subject to the dispute resolution process, and (b) an order of possession may be granted under section 55 of the Residential Tenancy Act.

Although the Notice does not set out the details of the late rent payments, given the Landlord's undisputed evidence of late rent payments and as the Tenant did not appear to dispute that evidence, I find on a balance of probabilities that the Tenant was aware of the details of the late rent payments at the time the Notice was issued. As the Tenant's application has been dismissed and as the Notice contains the required form and content, I find that the Landlord is entitled to an order of possession.

It is noted that section 4(3) of the Ministerial Order provides that despite section 84 of the Residential Tenancy Act, a tenant or landlord must not file an order of possession in the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the Residential Tenancy Act.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court subject to section 4(3) of the Ministerial Order.

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: May 01, 2020

Residential Tenancy Branch