



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baynes Lake Seniors Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) filed on June 25, 2020. The landlord applied for:

- an order of possession for the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice) served on the tenant.

The landlord's agent (landlord) attended the telephone conference call hearing; the tenant did not attend or file written evidence for the hearing.

The landlord provided her affirmed testimony. The landlord testified that she served the tenant with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal service on June 27, 2020.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit as a result of the Notice?

Background and Evidence

The landlord submitted evidence that this tenancy began on August 1, 2016. The landlord filed into evidence a copy of the written tenancy agreement.

The landlord submitted evidence that she served the tenant the Notice by personal service on February 29, 2020. The Notice was dated February 28, 2020, listed an effective end of tenancy date of March 31, 2020. The landlord filed a copy of the Notice into evidence.

The cause listed on the Notice stated that the tenant was in breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Filed into evidence was an addendum to the written tenancy agreement showing the material term.

The landlord submitted that the tenant has violated the no-smoking policy and term in the written tenancy agreement by continually smoking in his rental unit. This had led to many repeated warnings from the landlord, written and otherwise; however, he continues to smoke, causing other tenants to be deprived of their quiet enjoyment. The other tenants have complained to the landlord about this and many other issues with this tenant.

The landlord explained that due to the eviction ban during the Covid-19 pandemic, she was not sure that she was able to file this type of an application for dispute resolution. Therefore, they continued to collect rent, but informed the tenant, in writing, that the rent was being accepted on a use and occupancy basis. Filed into evidence was a copy of the written notice, which also contained another warning to the tenant about his smoking.

The landlord confirmed receipt of the tenant's July rent payment, and she said the order of possession of the rental unit could be effective on July 31, 2020.

Analysis

I have reviewed all the evidence and accept that the tenant was served with the Notice as declared by the landlord on February 28, 2020, which listed a move-out date of March 31, 2020.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, March 31, 2020.

I find no evidence that the tenant applied to dispute the Notice.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have also reviewed the landlord's relevant evidence and find on a balance of probabilities that the landlord submitted sufficient evidence to establish the cause listed on the Notice. I find the landlord submitted sufficient evidence that the no-smoking term contained within the written tenancy agreement was a material term and that the tenant did and continues to breach that term.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit, effective on July 31, 2020, at 1:00 p.m., at the landlord's request.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, such as bailiff costs and filing fees, are recoverable from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit is granted.

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: July 20, 2020

Residential Tenancy Branch