



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding Capilano Property Management
Services and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ET, FFL

Introduction

In this dispute, the landlord seeks an order of possession under sections 55 or 56 of the *Residential Tenancy Act* (the “Act”).

The landlord filed an application for dispute resolution on July 17, 2020 and a dispute resolution hearing was held, by way of teleconference, on August 13, 2020. Three representatives of the landlord attended the hearing and they were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. The tenant did not attend the hearing.

The landlord’s agent (N.T.) testified that they served the tenant with the Notice of Expedited Hearing package on July 18, 2020, by way of Canada Post registered mail. Copies of the receipt and tracking number were submitted into evidence, and which, when verified on the Canada Post tracking website, indicated that the documents were delivered to the tenant on July 23, 2020. Given this evidence I find that the tenant was served in compliance with section 89 of the Act.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of brief background, the tenancy started on January 15, 2020 and the monthly rent is \$1,850.00. The tenant paid a security deposit of \$925.00, which the landlord currently holds in trust. A copy of the written residential tenancy agreement was submitted into evidence.

The landlord's representative gave evidence that they served a One Month Notice to End Tenancy for Cause (the "Notice") on the tenant by posting it on the tenant's door. A copy of the Notice, along with a Proof of Service document (the service was witnessed by a third party) were submitted into evidence. The Notice outlined various reasons for ending the tenancy, it was dated and signed, and all the required information on pages 1 and 2 were completed.

The landlord's agent further confirmed that he contacted the Residential Tenancy Branch on July 15, 2020 to confirm whether the tenant had made an application for dispute resolution disputing the Notice. He obtained confirmation that the tenant had not filed an application to dispute the Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In this application, the landlord seeks an order of possession based on the undisputed Notice.

Application for Order of Possession

Section 55(2) and 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [...]

- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Further, section 55(4) of the Act states that

In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

- (a) grant an order of possession, and
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the landlord issued the Notice on June 27, 2020. They served the Notice by posting the Notice on the tenant's door on June 27, 2020, which is a method of service authorized under section 89(2)(d) of the Act. Pursuant to section 90(c) of the Act I note that the Notice was deemed to be received on June 30, 2020, the third day after it is attached to the door.

Having reviewed the Notice I find that it complies in form and content as required by section 47(3) of the Act. Finally, and most important, the tenant had ten days in which to dispute the Notice after having received it, pursuant to section 47(4) of the Act. That is, the tenant had until July 10, 2020 to make an application for dispute resolution to dispute the Notice. He did not make any such application.

Therefore, applying sections 55(2) and (4) of the Act to the facts, I grant the landlord an order of possession, effective two days after service upon the tenant. I further order that the tenancy shall end two days after service of the order of possession on the tenant.

Claim for Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the \$100.00 filing fee.

Finally, section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlords may, two days after serving the order of possession on the tenant, retain \$100.00 of the tenant's security deposit as recovery of the filing fee. The remainder of the security deposit will, of course, be subject the usual requirements under section 38 of the Act.

Conclusion

I HEREBY ORDER THAT

1. the landlord is granted an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order of possession may be filed in, and enforced as an order of, the Supreme Court of British Columbia;
2. the tenancy shall end two (2) days after the order of possession is served on the tenant; and,
3. the landlord shall retain \$100.00 of the tenant's security deposit as recovery of the application filing fee.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: August 13, 2020

Residential Tenancy Branch