



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

- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. Landlord RR (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord confirmed that the tenant was handed the 1 Month Notice on June 30, 2020. They entered into written evidence a copy of a signed and witnessed Proof of Service document attesting to this service of the 1 Month Notice to the tenant. I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

The landlord confirmed that they sent the tenant a copy of the dispute resolution hearing package and written evidence by registered mail on July 17, 2020. They entered into written evidence a copy of the Canada Post Tracking Number and Customer Receipt for this registered mailing. The landlord gave sworn testimony that their agent had spoken with the tenant who confirmed that the tenant had received this package. In accordance

with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the dispute resolution hearing package and written evidence on July 22, 2020, the fifth day after their registered mailing.

At the hearing, the landlord confirmed the email address provided to the Residential Tenancy Branch when they applied for dispute resolution. They advised that a copy of the decision and order could be emailed to them at that email address.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for cause based on the 1 Month Notice? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlords entered into written evidence a copy of the month-to-month Residential Tenancy Agreement signed by the parties on January 25, 2016, for a tenancy that enabled the tenant to take occupancy of the rental unit on February 1, 2016. Monthly rent in this multi-unit rental dwelling was set at \$485.00, payable in advance on the first of each month. The landlords continue to hold the \$242.50 security deposit paid when this tenancy began.

The landlord gave undisputed sworn testimony that no rent has been paid for this tenancy for the month of August 2020.

The landlords entered into written evidence a copy of their June 30, 2020 1 Month Notice requiring the tenant to end this tenancy by July 31, 2020. In that Notice, the landlords cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

Tenant has engaged in illegal activity that has, or is likely to:

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*

- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord entered written evidence and provided sworn testimony that the tenant had significantly interfered with and unreasonably disturbed other tenants in this rental property and that there was a history of the tenant using illicit drugs on the premises. The landlord said that as recently as four days earlier, the police had visited the premises regarding the tenant's activities.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that 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 1 Month Notice, July 31, 2020.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlords' 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlords were entitled to take occupancy of the rental unit on July 31, 2020. Since this has not yet occurred and the tenant has overheld their tenancy, and I grant an Order of Possession to the landlords.

As the landlords have been successful in their application, I allow them to recover their \$100.00 filing fee from the tenant pursuant to section 72 of the *Act*.

Conclusion

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

I order the landlords to retain \$100.00 from the security deposit for this tenancy as a means of implementing the monetary award for the recovery of the landlords' filing fee. The revised value of the security deposit is hereby reduced to \$142.50.

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: August 13, 2020

Residential Tenancy Branch