



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

On July 14, 2020, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Landlord V.B. attended the hearing with B.H. attending as an agent for the Landlord; however, the Tenant did not attend the 21-minute teleconference hearing. All in attendance provided a solemn affirmation. The Landlord advised that he did not want the style of cause to be amended to reflect his full legal name only, and he also requested that his agent be removed from the style of cause.

The Landlord advised that the Notice of Hearing package and some evidence was served to the Tenant by registered mail on July 15, 2020 (the registered mail tracking number is on the first page of this Decision). The tracking history indicated that this package was delivered on July 17, 2020. He also advised that he served additional evidence to the Tenant by registered mail on July 29, 2020 (the registered mail tracking number is on the first page of this Decision). The tracking history indicated that this package was sent on July 30, 2020 and delivered on July 31, 2020. Based on this undisputed testimony and evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's Notice of Hearing package five days after it was mailed. Furthermore, as the entirety of the Landlord's evidence was served in accordance with Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on January 1, 2020, that rent was established at an amount of \$2,500.00 per month, and that it was due on the first day of each month. A security deposit of \$1,250.00 was paid; however, only \$625.00 of the required \$1,250.00 pet damage deposit was paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served to the Tenant by posting it on her door on June 29, 2020. The reasons the Landlord served the Notice are because the “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, and put the landlord’s property at significant risk”, the “Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord’s property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord”, the “Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park”, the “Tenant has not done required repairs of damage to the unit/site/property/park”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The effective end date of the tenancy on the Notice was July 29, 2020.

The Tenant did not make an Application to cancel the Notice.

With respect to the reasons the Landlords served the Notice, B.H. submitted that the Tenant will not answer texts or emails. He also stated that they cannot be certain how much damage the Tenant has done to the rental unit.

The Landlord advised that the Tenant has too many pets in the rental unit and this is contrary to the terms of the tenancy agreement. Furthermore, a written agreement by the Tenant, dated February 12, 2020, confirms that she has extra pets in the rental unit, contrary to the terms of the tenancy agreement. However, the Tenant continues to have

excess pets in the rental unit. The Landlord referenced documentary evidence submitted to support this position.

The Landlord also advised that the Tenant has failed to maintain the property and he referenced pictures demonstrating the condition of the property. As well, he cited documentary evidence demonstrating that the municipality has taken steps to have the Landlords correct this issue.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenant on June 29, 2020, I have reviewed this Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The Landlords' evidence is that the Notice was served on June 29, 2020 by being posted on the Tenant's door. As per Section 90 of the *Act*, the Notice would have been deemed received after three days of being posted. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."*

After being served the Notice, the tenth day fell on Sunday July 12, 2020 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by Monday July 13, 2020. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that prevented her from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

Based on the undisputed evidence before me, I am satisfied that the Landlord has submitted sufficient and compelling evidence to justify the reasons for service of the Notice. In addition, as the Tenant has been conclusively presumed to have accepted the Notice, I find that the Landlords are entitled to an Order of Possession. I grant an

Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant.

As the Landlords were successful in these claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlords to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlords. 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.

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 20, 2020

Residential Tenancy Branch