



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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

PR, the agent for the landlord, ("the landlord") attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process. The agent corrected the name of the landlord which is amended throughout.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional sixteen minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 23, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on July 28, 2020.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on July 28, 2020.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and reimbursement of the filing fee?

Background and Evidence

The landlord provided uncontradicted evidence as the tenant did not attend the hearing. The landlord testified that the month-to-month tenancy began on September 1, 2015 and submitted a copy of the tenancy agreement. Rent is \$375.00 and the tenant provided a security deposit of \$187.50 which the landlord holds.

On January 21, 2020, the tenant left the shower running in the unit causing damage to the apartments in the 5 floors below the unit. The municipal Fire Department attended and issued a written notice of January 21, 2020 regarding hoarding by the tenant in the unit causing difficulty in accessing the unit and unsanitary conditions. The landlord testified that the Fire Department has subsequently issued two more letters of warning dated February 10, 2020 and August 25, 2020. The tenant has received copies of all three warnings and the condition of the unit is unchanged. The landlord submitted copies of the first two notices as evidence.

As a result of these and other actions, the landlord issued a One Month Notice dated July 6, 2020. The landlord served the Notice by posting to the tenant's door on July 6, 2020. Under section 90, the landlord effected service three days after posting, that is, on July 9, 2020. The effective day of the Notice was August 31, 2020.

The Notice, a copy of which was submitted as evidence, provided the following as cause for the issuance under section 47(1)(d):

- The tenant or person permitted on the residential property by the tenant has
 - put the landlord's property at significant risk

The tenant did not file an Application to Dispute the One Month Notice within the ten days.

The landlord requested an order of possession effective on August 31, 2020.

Analysis

I have reviewed all documentary evidence and testimony. Only the landlord attended the hearing although the tenant was served with Notice of the Hearing and the Application for Dispute Resolution.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing – *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.*

I find the form and content of the One Month Notice complies with section 52 of the *Act*. I find the tenant was served with the Notice on July 9, 2020 in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not file an Application to Dispute the Notice within ten days of service.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice of August 31, 2020 requiring the tenant to vacate the rental unit by that date.

Having reviewed the evidence supporting the landlord's testimony, I find the landlord is entitled to an order of possession under section 46, effective August 31, 2020. I grant the landlord reimbursement of the filing fee of \$100.00 and authorize the landlord to deduct this amount from the security deposit.

Conclusion

I grant the landlord an order of possession effective August 31, 2020

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be enforced as an order of that Court.

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 27, 2020

Residential Tenancy Branch