



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, FFL

Introduction

In this dispute, the landlord seeks an order of possession pursuant to section 55(2)(b) of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks recovery of the \$100.00 filing fee pursuant to section 72 of the Act.

The landlord filed an application for dispute resolution on August 5, 2020 and a dispute resolution hearing was held at 9:30 AM on September 15, 2020. The landlord’s agent (the “landlord”) attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. The tenant did not attend.

The landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenant by way of Canada Post registered mail on August 13, 2020. Based on the undisputed evidence of the landlord I find that the tenant was served the Notice of Dispute Resolution Proceeding 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

The tenancy started on October 17, 2019 and monthly rent is \$1,770.00. The tenant paid a security deposit of \$875.00, which the landlord currently holds in trust.

A copy of the written tenancy agreement (the “agreement”) was submitted into evidence. The landlord referred me to clause 17 of the agreement which states that, unless written permission is received in advance from the landlord, a tenant “must not keep or allow on the Residential Property any animal.”

The landlord testified that he served a One Month Notice to End Tenancy for Cause (the “Notice”) on the tenant on June 26, 2020, after previously warning her in an email (a copy of which was in evidence) to not have a dog in the rental unit. Service of the Notice was executed by being posted on the tenant’s door. The tenant acknowledged service of the Notice in an email to the landlord; that email was provided in evidence.

A copy of the Notice was submitted into evidence and referred to by the landlord during the hearing. In addition, a copy of a Proof of Service document was in evidence.

As of today, the tenant had not made an application to dispute the Notice, which indicated that unless the tenant disputed the Notice within 10 days of receiving the Notice that the tenancy would end on July 31, 2020.

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.

Section 47(5) of the Act, on which the Notice’s language is based, reads as follows:

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

In this dispute, the tenant did not dispute the Notice, and is therefore conclusively presumed to have accepted that the tenancy ended on July 31, 2020.

Section 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:”

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

In addition, 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, because the tenant has not disputed the Notice and because the landlord requested an order of possession based on the undisputed Notice, I find that in considering all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, on a balance of probabilities the landlord has met the onus of proving their application for an order of possession. Thus, pursuant to section 55(4)(a) of the Act, I grant the landlord an order of possession.

Finally, regarding the claim for the 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 therefore grant their claim for reimbursement of the application filing fee of \$100.00.

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 the tenancy ended on July 31, 2020, I order that the landlord may retain \$100.00 of the tenant’s security deposit in full satisfaction of the \$100.00 award.

Conclusion

I hereby grant the landlord 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 may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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

Dated: September 15, 2020

Residential Tenancy Branch