



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

- an Order of Possession based on a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued to the tenant 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 9:53 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 provided undisputed sworn testimony and written evidence that they sent the tenant the 1 Month Notice by registered mail on June 25, 2020. They also provided undisputed sworn testimony and written evidence that they sent a copy of their dispute resolution hearing package and written evidence to the tenant by registered mail on August 7, 2020. They provided Canada Post Tracking Numbers to confirm these mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with these documents on the fifth day after their registered mailing.

Issues(s) to be Decided

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

Background and Evidence

This tenancy began on October 1, 2019. Monthly rent is set at \$995.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$497.50 security deposit for this tenancy.

The landlord gave undisputed sworn testimony that between October 1, 2019 and March 1, 2020, the tenant has only paid their monthly rent in full on the first of the month on two occasions. On all other occasions during that time period, the landlord said that the tenant made partial cash payments over the course of the month. They said that they received full payments by way of cashier's cheques for the two months when rent was paid on time about six months ago. The landlord said that the tenant has not made any payments towards their rent since mid-March 2020.

The landlord entered into written evidence a copy of the 1 Month Notice that the landlord said they sent the tenant by registered mail on June 25, 2020. That Notice requiring the tenant to end this tenancy by July 25, 2020 cited the following reason for the issuance of the Notice:

Tenant is repeatedly late paying rent.

As I noted at the hearing, the corrected effective date of the 1 Month Notice is July 31, 2020.

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 an 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 corrected 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 landlord's 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*. I am also satisfied that there has been a historic pattern of late payment of rent by the tenant that enables the landlord to obtain an end to this tenancy for cause on the basis of late payment of rent. For these reasons, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I allow the landlord's application. 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 allow the landlord's application to recover their \$100.00 filing fee by ordering the landlord to deduct \$100.00 from the value of the security deposit for this tenancy. The security deposit is reduced from \$497.50 to \$397.50 to implement this award.

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: September 04, 2020

Residential Tenancy Branch