



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, OPC, FFL

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on October 16, 2020 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 17, 2020 (the "Notice");
- For compensation for damage caused by the tenant, their pets or guests to the unit or property;
- To keep the security deposit; and
- To recover the filing fee.

The Representatives for the Landlord appeared at the hearing. The Tenant did not appear at the hearing which lasted 17 minutes. I explained the hearing process to the Representatives for the Landlord who did not have questions when asked. The Representatives for the Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

S.F. testified that the hearing package and evidence were posted to the door of the rental unit October 22, 2020. The Landlord submitted a Proof of Service signed by a witness to support this.

Based on the undisputed testimony of S.F. and the Proof of Service, I am satisfied the hearing package and evidence were posted to the door of the rental unit October 22, 2020.

Section 89 of the Residential Tenancy Act (the “Act”) sets out service requirements for Applications for Dispute Resolution and states:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

Section 89(2) of the Act allows for service by posting the hearing package to the door of the rental unit whereas section 89(1) does not. Section 89(2) of the Act only relates to requests for Orders of Possession. It does not relate to monetary claims.

I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(g) and 89(2)(d) of the Act. Pursuant to section 90(c) of the Act, the Tenant is deemed to have received the hearing package and evidence October 25, 2020. I am also satisfied the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service. Therefore, I have considered the Landlord's requests for an Order of Possession and to recover the filing fee.

However, I am not satisfied the Tenant was served with the hearing package in accordance with section 89(1) of the Act and therefore dismiss the requests for compensation and to keep the security deposit with leave to re-apply. This decision does not extend any time limits set out in the Act.

I proceeded with the hearing in the absence of the Tenant. The Representatives for the Landlord were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Representatives for the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is not signed by the Tenant. S.F. testified that the Landlord does not have a copy of the written tenancy agreement signed by the Tenant but that the written tenancy agreement reflects the verbal tenancy agreement between the parties. The tenancy started November 01, 2017 and is a month-to-month tenancy. Rent is due on or before the first day of each month.

The Landlord submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by S.F. It has an effective date of October 31,

2020. The grounds for the Notice are that the Tenant has breached a material term of the tenancy agreement.

S.F. testified that all pages of the Notice were posted to the door of the rental unit September 17, 2020. The Landlord submitted a Proof of Service signed by a witness confirming this.

S.F. was not aware of the Tenant disputing the Notice.

S.F. testified that the Tenant has paid rent for January and therefore the Landlord is seeking an Order of Possession effective January 31, 2021.

Analysis

The Notice was issued pursuant to section 47 of the Act. Section 47(1)(h) of the Act states:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Based on the undisputed testimony of S.F. and Proof of Service, I am satisfied the Tenant was served with the Notice in accordance with section 88(g) of the Act on September 17, 2020. Pursuant to section 90(c) of the Act, the Tenant is deemed to have received the Notice on September 20, 2020.

Upon a review of the Notice, I find it complies with section 52 of the Act in form and content as required by section 47(3) of the Act.

The Tenant had 10 days from receiving the Notice on September 20, 2020 to dispute it pursuant to section 47(4) of the Act. I accept that S.F. is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant has disputed the Notice. I am satisfied the Tenant did not dispute the Notice.

Therefore, pursuant to section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended October 31, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by October 31, 2020.

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act and I issue the Landlord an Order of Possession effective January 31, 2021.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the Act. The Landlord is issued a Monetary Order for this amount.

Conclusion

The Landlord is issued an Order of Possession effective January 31, 2021. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee and issue the Landlord a Monetary Order for this amount. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and 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 Act.

Dated: January 08, 2021

Residential Tenancy Branch