



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Penticton & District Society for Community
Living and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on October 27, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on November 1, 2020. The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on March 31, 2017. Subsidized rent of \$547.00 is payable on the first day of each month. At the outset of the tenancy the

Landlord collected \$300.00 as a security deposit. On September 22, 2020 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door. The Notice is on the approved Residential Tenancy Branch form and sets out the dispute rental address. Although the copy of the Notice that was provided as evidence for this hearing was not signed or dated the Landlord confirms that the Notice that was given to the Tenant was signed by Landlord TL and was dated September 22, 2020. The effective date of the Notice is set out as October 25, 2020 automatically corrected to October 31, 2020. The Notice sets out the grounds for ending the tenancy along with details of those grounds. The Tenant did not dispute the Notice and has not moved out of the unit. The Tenant has paid January 2021 rent.

Analysis

Section 47(5) of the Act provides that if a tenant who has received a notice to end tenancy for cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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. Given the undisputed evidence that the Notice was given to the Tenant and that the Tenant did not dispute the Notice I find that the Tenant has accepted the end of the tenancy and must vacate the unit.

Section 55(2)(b) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where 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. Section 52 of the Act provides that in order to be effective a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

- (d)except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e)when given by a landlord, be in the approved form.

As the Tenant did not dispute the Notice and as the Notice is effective to end the tenancy, I find that the Landlord is entitled to an order of possession effective 1:00 p.m. on January 31, 2021. As the Landlord's claim has been successful, I find that the Landlord is entitled to recovery of the \$100.00 filing fee and I order the Landlord to deduct this amount from the security deposit of \$300.00.

Conclusion

I grant the Landlord an **Order of Possession** effective 1:00 p.m. on January 31, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain \$100.00 from the security **deposit** and interest of \$300.00 in full satisfaction of the claim.

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 12, 2021

Residential Tenancy Branch