



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 for:

- an Order of Possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent, KH, 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 online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on October 30, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on November 4, 2020, five days after its registered mailing. The tenant did not submit any written evidence for this hearing.

The landlord's agent testified that the tenant was served with the landlord's 1 Month Notice to End Tenancy for Cause, dated September 25, 2020 ("1 Month Notice"), on September 27, 2020, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on September 30, 2020, three days after its posting.

Preliminary Issue—Amendment to landlord's Application

The landlord submitted a monetary order worksheet summarizing monetary losses associated with this tenancy. The landlord confirmed no amendments have been filed by the landlord.

Rule 4.6 states the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the by the respondent(s) not less than 14 days before the hearing.

As no amendment has been received in accordance with RTB Rule 4.6, and the respondents has the right to review and respond to the amendment and supporting evidence, the landlord's new monetary claim will not considered as part of this application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

This fixed-term tenancy began on March 15, 2020, with monthly rent set at \$1,750.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$875.00, which the landlord still holds.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant is repeatedly late paying rent;

2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submitted detailed evidence, including correspondence showing numerous complaint and warning letters, to show that the tenant has significantly disturbed others in the building. The landlord also submitted a history of late rent payments by the tenant. The landlord testified that they believe that the tenant moved out some time in December 2020 and abandoned the rental unit. The landlord has not received confirmation from the tenant that the tenant had moved out. The landlord is requesting an Order of Possession, as well as recovery of the filing fee.

Analysis

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice 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, and (e) when given by a landlord, be in the approved form.

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 effective date of the 1 Month Notice, October 31, 2020.

In this case, this required the tenant and anyone on the premises to vacate the premises by October 31, 2020. As the landlord has not received confirmation from the tenant that the tenant has moved out, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application. I issue the landlord a monetary order in that amount. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court. As the landlord continues to hold the tenant's security deposit of \$875.00, I allow the landlord to exercise the option to retain \$100.00 of the tenant's security deposit in accordance with the offsetting provisions of section 72 of the *Act*.

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: January 14, 2021

Residential Tenancy Branch