



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, CNC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord attended the hearing via conference call and provided undisputed testimony. The tenant did not attend. The landlord stated that the tenant was served with the notice of hearing package and the submitted 12 document evidence files via Canada Post Registered Mail on November 18, 2020. The landlord submitted a copy of the Canada Post Customer Receipt as confirmation of service. The landlord stated that she was served with the tenant's notice of hearing package and that no documentary evidence was provided by the tenant.

I accept the undisputed testimony of the landlord and find that the tenant is deemed served as per sections 89 and 90 of the *Act* with the notice of hearing package and the submitted documentary evidence.

The hearing concluded after 36 minutes with the tenant still not in attendance. I find based upon the above undisputed testimony of the landlord that the tenant is deemed to have abandoned her application. The tenant's application is dismissed without leave to reapply.

The hearing proceeded on the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 15, 2019 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated February 24, 2019. The monthly rent is \$1,400.00 payable on the 1st day of each month. A security deposit of \$700.00 was paid.

The landlord provided undisputed testimony that on October 19, 2020, the landlord served the tenant with the 1 Month Notice dated October 19, 2020. The 1 Month Notice sets out an effective end of tenancy date of November 30, 2020 and that it was being given as:

- the tenant has not done required repairs of damage to the unit/site/property/park.

The details of cause states:

The window in the living room has been broken for over a year now. (Sept 22, 2019) I have asked several times for this to be fixed, especially during the colder winter months where condensation could cause damage to the interior of the window sill. There is a hole in the drywall from where the door knob of the main door had hit the wall due to the stopper not being in place properly (stopper was in place at time of tenant moving in). The garage is in disarray with zero room to move, my concern of mold created by condensation from no air movement could possibly cause major drywall damage.
[reproduced as written]

The landlord clarified that a window had been found broken at the rental on September 22, 2019 and the tenant was requested verbally to repair the window. The landlord

stated that she would make this request monthly since that date until service of the 1 month notice dated October 19, 2020. The landlord stated that the tenant never made any effort to repair the window.

The landlord also details issues with damage (a hole) to the drywall behind the door. The landlord discovered this damage in August 2020 and requested that the tenant make this repair. The landlord stated that she made this repair request verbally on a monthly basis since it was discovered. The landlord stated that the tenant has made no effort to repair this damage.

The landlord also provided details of “scuff marks” throughout the hallway walls and the bathroom door. However, the landlord confirmed that at no time has she made a request for the tenant to repair this damage.

The landlord also referred to issues with the garage noting that it was “over full” with the tenants’ possession. The landlord stated that she is concerned about possible drywall damage.

Analysis

I accept the undisputed testimony of the landlord and find that the tenant was served with the 1 month notice dated October 19, 2020 in person on October 19, 2020. The 1 month notice sets out that the tenant has failed to conduct repairs of the rental unit after requested to do so by the landlord. The landlord provided undisputed testimony that upon being discovered by the landlord, the tenant was notified to repair those items. Some issues as old as 1 year. The landlord stated that no effort was made by the tenant to make any repairs.

Furthermore, and pursuant to subsection 47(5), the 1 Month Notice states that the tenants had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant’s application was dismissed and as such, the tenant did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reason for cause set out by the landlord in the 1 Month Notice.

Pursuant to section 55 of the Act the landlord is granted an order of possession.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 19, 2021

Residential Tenancy Branch