



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

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, landlord P.C. and her interpreter attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was personally served with this application for dispute resolution though neither party could recall on what date. I find that this application for dispute resolution was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,100.00 is payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlords personally served the tenant with a One Month Notice to End Tenancy for Cause (the "Notice") on October 31, 2020. The Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant has not done required repairs of damage to the unit/site.

Landlord P.C. testified that the tenant was served with the Notice for the following reasons:

- tenant plays loud music early in the morning and all day long;
- conversations between the landlords and the tenant have gone "wrong";
- tenant has left garbage on the property;
- tenant has taken items from the landlords' shed without permission;
- tenant has fallen asleep with food in the oven; and
- tenant smokes in the unit even though it is a non-smoking unit.

The tenant testified that she filed to dispute the Notice with the Residential Tenancy Branch on February 8, 2021 but did not know the file number.

The tenant testified that she was given a chair in the backyard to smoke and that she uses that chair. The tenant testified that she does not take order from other people's

children and is not responsible for the landlords' children, parents, or dog. The tenant testified that she just wants her privacy and that the landlords' other allegations are untrue.

Analysis

I find that the Notice was served on the tenant on October 31, 2020 in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution with the Residential Tenancy Branch 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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being November 30, 2020.

As the tenant did not vacate the subject rental property on that date, I award the landlord a two-day order of possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to sections 47 and 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service 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.

The landlords are entitled to retain \$100.00 from the tenant's security deposit.

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: February 22, 2021

Residential Tenancy Branch