



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROS. HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

The landlord has applied for an order of possession based on a One Month Notice to End Tenancy (“Notice”) under sections 47 and 55 of the *Residential Tenancy Act* (“Act”). And, the landlord seeks recovery of the filing fee under section 72(1).

The landlord’s agent and the landlord’s counsel attended hearings on January 14 and on April 13, 2021, which were held by teleconference. The tenant did not attend either hearing. The matter was adjourned in order to serve the tenant with the Notice of Dispute Resolution Proceeding package and the Notice. Further details about the reason for adjourning are contained within my Interim Decision of January 14, 2021.

Landlord’s counsel gave evidence that the tenant was served with the new Notice of Dispute Resolution Proceeding package (for today’s hearing) and with the Notice, by way of Canada Post registered mail. The registered mail tracking number was provided to me during the hearing and is recorded on the cover page of this decision.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began in November 2019. On October 1, 2020, the tenant was served with the Notice by registered mail. That mail basically went missing and is presumed to have been stolen as part of a larger theft of mail within the municipality.

On January 19, 2021, the Notice (along with the Notice of Dispute Resolution Proceeding) was served on the tenant by registered mail. The Canada Post tracking site indicates that the mail was available for pick up on January 21, 2021. However, the tenant failed to retrieve the mail and it was ultimately returned on February 20, 2021.

Copies of all pages of the Notice were provided in evidence and the Notice indicates that the tenancy was being ended because the tenant assigned or sublet the rental unit without the landlord's permission. It appears that the tenant was renting the property out as a vacation rental, in contravention of municipal bylaws. Finally, I note that there is no evidence or information before me suggesting that the tenant disputed the Notice.

Analysis

Subsections 47(4) and (5) of the Act states the following:

- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

In this dispute, the tenant is deemed to have received the Notice on or about January 21, 2021. Failure to retrieve or accept documents served by mail does not quash the deeming provisions under section 90 of the Act. The tenant in this dispute did not make an application to dispute the Notice and as such I find that the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. (I note that the effective date of the Notice would be corrected to February 21, 2021, pursuant to section 53 of the Act.)

Section 55(2)(b) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given and the tenant has not disputed the notice. As the tenant has not disputed the Notice, I therefore grant the landlord an order of possession.

An order of possession, which will go into effect two days after service upon the tenant, is issued in conjunction this decision.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the applicant was successful, I grant their claim for the \$100.00 filing fee. Pursuant to section 38(4)(b) of the Act, then, I authorize and order that the landlord may retain \$100.00 of the tenant's security deposit in satisfaction of the above-noted award.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 13, 2021

Residential Tenancy Branch