



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPM

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated December 20, 2020 ("One Month Notice"); and for an Order of Possession based on a Mutual Agreement to End Tenancy dated December 20, 2020 ("Mutual Agreement").

The Landlord and two agents for the Landlord, A.L. and D.L. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agents.

I explained the hearing process to the Landlord and Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent, A.L., testified that they served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 19, 2021. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and she confirmed this in the hearing. The Landlord did not have the Tenant's email address; therefore, the Decision will be mailed to him at the rental unit address. The Landlord also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord and Agents that they were not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and Agents stated that the periodic tenancy began on June 1, 2016, and that the Tenant is required to pay the Landlord a monthly rent of \$1,740.00, due on the first day of each month. The Landlord and Agents said the Tenant paid the Landlord a security deposit of \$850.00, and no pet damage deposit. The Landlord said she still holds the security deposit.

The Parties signed the Mutual Agreement, which was signed and dated December 20, 2020, and which has the rental unit address, both Parties' signatures, and an effective vacancy date of February 1, 2021.

The Landlord also served the Tenant with the One Month Notice, which was signed and dated December 20, 2020, it has the rental unit address, it was served in person on December 20, 2020, it has an effective vacancy date of February 1, 2021, and it was served on the grounds that the Tenant is repeatedly late paying rent. The Landlord said that the Tenant has not paid rent since October 2020. The Landlord submitted a copy of her bank statement with annotations on the side, indicating that the Tenant paid \$1,700.00 of his rent on October 26, 2020, although \$1,740.00 was due on October 1, 2020.

The Landlord's bank statement also indicates that the Tenant was late paying rent in:

- September 2020 (partial payment on September 14);
- August 2020 (partial payment on August 7, 2020);
- July 2020 (no rent paid at all in July);
- June 2020 (\$90.00 more than full payment on June 30, 2020);
- May 2020 (partial payment on May 15, 2020);
- April 2020 (partial payment on April 8, 2020).

The Landlord's list of late, partial payments continues back to February 2020.

There is no evidence before me that the Tenant disputed the One Month Notice pursuant to section 47(4) of the Act.

Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 90 of the Act, I find that the Tenant was served with the One Month Notice in person on December 20, 2021.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution to cancel the notice 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.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on February 1, 2021. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the effective date has passed and the Agent testified that rent has not been paid since October 26, 2020, the Order of Possession will therefore be effective two days after service on the Tenant.

Conclusion

The Landlord is successful in her Application. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order**

on the Tenant. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 10, 2021

Residential Tenancy Branch