



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC, MNRL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:37 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by KC (the landlord), attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness KE also attended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on March 29, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on April 03, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the order of possession based on the Notice is not sufficiently related to the monetary claim to warrant that they be heard together.

The landlord's monetary claim is unrelated in that its base rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss the landlord's monetary claim with leave to reapply.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate his claim.

The landlord said the rental unit was rented to the tenant's father in March 1976. The tenant's father died in December 2017. The landlord affirmed the tenancy with the respondent tenant started on January 01, 2018. Monthly rent is \$1,600.00, due on the first day of the month. At the outset of the 1976 tenancy the landlord collected a security deposit from the tenant's father of \$25.00 and transferred it to the current tenancy. The landlord holds in trust the security deposit collected in 1976, which today is corrected to \$116.19.

The landlord stated he served the Notice in person on November 29, 2020. The landlord submitted into evidence a witnessed proof of service (RTB form 34). Witness KE testified he observed the tenant receiving the Notice on November 29, 2020. The tenant did not dispute the Notice and continues to occupy the rental unit.

A copy of the Notice was provided. The Notice is dated November 29, 2020 and the effective date is December 30, 2020. The reason to end tenancy is the tenant is repeatedly late paying rent.

The details of the events are:

Rent has always been due on the first day of the month. However, despite his having two adult roommates contributing to the rent, and despite my verbal reminders that rent is due on the first of the month, and writing "Late" on a number of late-rent receipts to reinforce the point that late rent is unacceptable, there have been repeated instances of late payment of rent over the last two years.

Instances of Late Payment of Rent in the Last Two Years:

2019: Jan. 01(Feb 07) (10 Day RTB Notice to End Tenancy given); Apr 01 (Apr. 28); May 01 (May 23); June 01 (June 20)

2020: Jan. 01 (Jan 16); Mar 01 (Mar 13);

Analysis

Based on the undisputed landlord's testimony and the proof of service form, I find the tenant was served the Notice in person on November 29, 2020, in accordance with section 88(1) of the Act.

I find the form and content of the Notice is valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and is in the approved form.

Section 47(5) of the Act states:

- (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.

Section 47(5) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property.

As the tenant is occupying the rental unit and the effective date of the Notice is December 30, 2020, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

I warn the tenant that he may be liable for any costs the landlord incurs to enforce the order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** 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.

Pursuant to section 72(2)(b), the landlord is authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: July 14, 2021

Residential Tenancy Branch