



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros. Agencies Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC OPR FFL

Introduction

The landlord applied for an order of possession based on two undisputed notices to end tenancy, pursuant to sections 46, 47, and 55 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee under section 72 of the Act.

Two landlord representatives attended the hearing on September 27, 2021 at 9:30 AM. Neither tenant attended the hearing which ended at 9:40 AM.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

The landlord's representatives (hereafter "landlord" for brevity) gave evidence that the tenants were served with a copy of the Notice of Dispute Resolution Proceeding package by Canada Post registered mail (returned unclaimed). A copy of the Notice of Dispute Resolution Proceeding was also attached to the door of the rental unit in July 2021, and a secondary copy with additional evidence, was again taped to the door of the rental unit on September 2, 2021.

Based on this undisputed evidence I find that the tenants were served with the Notice of Dispute Resolution Proceeding in accordance with the Act and the *Rules of Procedure* and were thus aware of this hearing.

Issues

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

Background and Evidence

The tenancy began on May 1, 2015 and monthly rent is \$760.00. The tenants paid a security deposit of \$380.00 which the landlord currently holds in trust pending the outcome of this dispute. A copy of the written tenancy agreement was in evidence.

There are two undisputed notices to end tenancy for which the landlord sought an order of possession. This hearing and decision will only address the more recent notice.

A One Month Notice to End Tenancy for Cause (the "Notice") was served on the tenants in-person on April 27, 2021. The landlord's building manager testified that he served the Notice on the tenants who refused to take it. He then placed the Notice inside the rental unit in the presence of the tenant (A.L.). Service was witnessed by the owner, and a completed Proof of Service document is in evidence, as is a copy of the Notice. The representatives stated that neither notice to end tenancy was disputed.

Analysis

The Notice was issued pursuant to section 47(1)(d)(i) of the Act.

Subsections 47(4) and (5) of the Act state 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 tenants were properly served, in-person, with the Notice. The tenants did not make an application for dispute resolution within ten days of receiving the Notice. As such, pursuant to section 47(5) of the Act the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (which was May 31, 2021) and are required to vacate the rental unit.

Under [section 55\(2\)\(b\)](#) of the Act a landlord may request an order of possession where a notice to end the tenancy has been given and the tenant has not applied to dispute the notice within the required time.

Taking into careful consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for an order of possession based on the undisputed Notice pursuant to sections 47(5) and 55(2)(b) of the Act. An order of possession is thus granted to the landlord and is issued in conjunction with this decision.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord was successful, I grant it \$100.00 in compensation for the filing fee. Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I authorized the landlord to retain \$100.00 the tenants’ security deposit in satisfaction of the above-noted award.

Conclusion

I grant the landlord an order of possession, which must be served on the tenants 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 delegated authority under section 9.1(1) of the Act.

Dated: September 27, 2021

Residential Tenancy Branch