



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent JR (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Another agent of the corporate landlord also attended the hearing.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by posting on the rental unit door on May 18, 2021 and subsequently providing a second copy to the tenant in person on August 25, 2021. Based on the landlord's undisputed testimony I find the tenant is deemed served on May 21, 2021, three days after posting and in any event has been sufficiently served pursuant to section 71(2)(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession as claimed?
Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in 1999. The landlord assumed the tenancy when they began managing the rental unit in 2018. The rental unit is a unit in a multi-unit subsidized, independent living building. There is a security deposit of \$150.00 currently held by the landlord.

A copy of the signed tenancy agreement was submitted into documentary evidence. Clause 13 of the tenancy agreement provides, in part, as follows:

13) Repairs

...

b) Tenant's obligations

- i) the tenant must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.
- ii) if the tenant does not comply with the above obligations within a reasonable time, the landlord may seek a monetary order through arbitration under the Residential Tenancy Act for the cost of repairs, serve a notice to end tenancy, or both

The landlord submits that the condition of the rental unit was noted to be unsanitary and a source of health risks to the other occupants of the building during an inspection on November 12, 2020. The landlord subsequently arranged for inspection of the suite by third-parties including social workers and fire and health professionals.

The landlord issued warning letters to the tenant to address the condition of the suite on January 8, 2021 and February 12, 2021. The landlord provided copies of the warning letters sent to the tenant as well as correspondence with the tenant's support team members regarding the issues, providing community resources for cleaning and a

comprehensive fire safety report from the municipality deeming the state of the rental unit to be unsafe. The landlord also submitted into evidence numerous photographs of the condition of the rental suite.

The landlord submits that despite ongoing efforts by the landlord's agents and the tenant's support team the tenant has refused to rectify their behaviour even temporarily.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated April 14, 2021. The notice provides the reason for the tenancy to end is that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice. The landlord served the 1 Month Notice on the tenant by posting on the rental unit door on April 16, 2021. The landlord is unaware of the tenant filing an application to dispute the notice.

Analysis

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the tenant is deemed served with the 1 Month Notice on April 19, 2021, three days after posting, in accordance with sections 88 and 90 of the *Act*. I find that the tenant has failed to file an application for dispute resolution within 10 days of April 19, 2021, the timeline granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, May 31, 2021.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I am satisfied with the evidence of the landlord that the tenant has breached a term of the signed tenancy agreement. I find that the landlord took immediate action upon learning of the breach by issuing warning letters, involving the municipality and the tenant's support team and attempting to work with the tenant to rectify the situation. Under the circumstances I am satisfied that the term of the tenancy agreement requiring

the tenant to maintain the rental unit in an acceptable state of cleanliness and repair is a material term.

I accept that the landlord provided written notice to the tenant clearly identifying the term of the tenancy agreement that has been breached and providing reasonable timeframes to correct this breach. I accept the undisputed evidence that the tenant failed to take any action despite the warnings and resources provided.

Therefore, in accordance with section 55 of the Act, I find that the landlord is entitled to an Order of Possession. As the effective date of the notice has passed I issue an Order effective 2 days after service on the tenant.

As the landlord was successful in their application I grant them an order to recover their filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of this monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 to \$50.00.

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: September 13, 2021

Residential Tenancy Branch