



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL

Introduction

The landlord issued a One Month Notice to End Tenancy for Cause (the “Notice”) and seeks an order of possession pursuant to sections 47 and 55 of the *Residential Tenancy Act* (“Act”). In addition, the landlord seeks to recover the cost of the application filing fee under section 72 of the Act.

Both parties, including an advocate for the tenant, attended the hearing.

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 February 1, 2020 and rent is \$768.00. The landlord did not know whether they held a security deposit. A copy of the tenancy agreement was in evidence.

On March 24, 2021, the landlord issued the Notice. After much sorting through her paperwork and remarking that her toddler had gotten into the paperwork (“it’s fucked up to say the least”), the landlord gave evidence that the Notice was served in-person on the tenant on March 24. The landlord also testified that all pages of the Notice were given to the tenant; a full copy of the Notice was submitted into evidence by the landlord. The tenant’s advocate confirmed that the tenant received the Notice as described by the landlord and did not dispute any of the details regarding service.

The landlord testified that they did not and have not received any Notice of Dispute Resolution Proceeding from either the tenant or the Residential Tenancy Branch in respect of the Notice.

The tenant's advocate argued that the reason why the Notice was not disputed is because the tenant "believed that the [Notice] was included in the previous hearing." Moreover, the advocate submitted that the landlord has created a lot of confusion in issuing multiple notices, and, that it ought to fall on the Residential Tenancy Branch to properly let the tenant know which notices were being dealt with.

The advocate started to provide detailed testimony on the background of the tenancy, including addendums, and it was at this point that I requested the advocate not continue. Much of the advocate's testimony was not relevant to the specific issue at hand.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Notice was issued under section 47 of the Act. Section 47(4) of the Act states that 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."

Section 47(5) of the Act states that

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, based on the evidence before me, I find that the tenant received the Notice on March 24, 2021. There is no evidence before me that the tenant made an application for dispute resolution to dispute the Notice. Therefore, in applying section

47(5) of the Act to the facts, it follows that the tenant has conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Having reviewed the Notice in its entirety, I find that the Notice complies with section 52 of the Act in form and content and is therefore effective.

Section 55(2)(b) of the Act states that a landlord may request an order of possession if

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired [. . .].

Taking into consideration all the 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 her application for an order of possession based on the undisputed Notice.

Accordingly, an order of possession is issued in conjunction with this Decision, to the landlord. The landlord must serve a copy of the order of possession on the tenant.

While the tenant advocate argued that the landlord created “all of this confusion” by issuing a number of notices to end tenancy and argued that the tenant believed that the Notice was previously dealt with (which it was not, given that no application for dispute resolution disputing the Notice was ever actually made), this is not a defense to failing to properly dispute a notice to end tenancy. The responsibility of keeping track of which notices were being disputed lay solely with the tenant.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant.

As the landlord succeeded in her application, I grant her \$100.00 in compensation to cover the cost of the filing fee. A monetary order in the amount of \$100.00 is issued to the landlord, in conjunction with this Decision. A copy of that order must also be served by the landlord on the tenant.

Conclusion

The landlord's application is hereby granted.

I hereby grant the landlord an order of possession, which must be served on the tenant and which is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$100.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding and is made on delegated authority under section 9.1(1) of the Act.

Dated: September 10, 2021

Residential Tenancy Branch