



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

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 an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55.

I left the teleconference connection open until 1:49 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. 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. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) in person on May 21, 2021, in accordance with section 89(2)(a) of the Act.

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

Issue to be Decided

Is the landlord entitled to an order of possession based on the Notice?

Background and Evidence

The landlord affirmed the tenancy started on September 01, 2020. Monthly rent is \$1,500.00, due on the first day of the month. The tenancy agreement was submitted into evidence.

The landlord affirmed he served the Notice in person on April 03, 2021. A witnessed proof of service (RTB form 34) indicating the landlord served the Notice in person on April 03, 2021 was submitted into evidence.

A copy of the Notice was provided. The Notice is dated April 03, 2021 and the effective date is May 03, 2021. The ground to end tenancy cited in the Notice is: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so".

The landlord affirmed that when he served the Notice he explained to the tenant that the Notice was issued because the tenant did not clean the backyard.

The landlord affirmed the tenant did not dispute the Notice and continues to occupy the rental unit.

Analysis

Based on the undisputed testimony of the landlord and the proof of service, I find that the tenant was served the Notice in person on April 03, 2021 in accordance with section 88 (a) 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.

Based on the landlord's convincing testimony, I find the landlord explained to the tenant that the Notice was issued because the tenant did not clean the backyard.

Sections 47(4) and (5) of the Act state:

- (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.

Section 47(5) is mandatory, and I do not have discretion as to its application. Based on the landlord's testimony, I find that the tenant did not file an application to dispute the notice within 10 days, or at all.

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 unit.

As the tenant is occupying the rental unit and the effective date is May 03, 2021, 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.

It is not necessary for me to determine if the tenant acted as alleged by the landlord on the Notice due to the application of sections 47(4) and (5) of the Act. As such, I make no findings as to the truth of the landlord's allegations about the conduct of the tenant.

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

Conclusion

Pursuant to section 55(2)(b) of the Act, 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.

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 15, 2021

Residential Tenancy Branch