



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Society of Hope
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on June 25, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated June 2, 2021 (the "One Month Notice").

The hearing was scheduled for 9:30AM on October 25, 2021 as a teleconference hearing. W.P. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that W.P. and I were the only persons who had called into this teleconference.

W.P. testified the Application and documentary evidence package was served to the Tenant by registered mail on July 15, 2021. The Landlord submitted a registered mail receipt confirming the mailing. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on July 20, 2021, the fifth day after the registered mailing.

W.P. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?

Background and Evidence

W.P. testified that the tenancy began on December 1, 2016. Currently rent in the amount of \$747.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$338.50 which the Landlord continues to hold.

W.P. testified that the Tenant has been smoking in his rental unit which contradicts the tenancy agreement and the regulation the Tenant was advised of and acknowledged at the start of the tenancy. W.P. stated that the Tenant has been provided a written warning cautioning the Tenant about the no smoking provisions, however, W.P. stated that the Tenant continues to smoke in and around his rental unit.

W.P. stated that the Landlord subsequently served the Tenant with a One Month Notice for Cause dated June 2, 2021 with an effective vacancy date of July 31, 2021 by posting it to the Tenant's door on June 2, 2021. The Landlord provided a signed witnessed proof of service document in support. The Landlord's reason for ending the tenancy on the One Month Notice is;

"The Tenant or person permitted on the property by the Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the Landlord, and put the Landlord's property at significant risk."

"Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

W.P. stated that the Tenant continues to smoke in his rental unit, therefore, the Landlord is seeking an order of possession in relation to the One Month Notice.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlord served the Tenant with a One Month Notice on June 2, 2021 by posting it to the Tenant's door on June 2, 2021. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on June 5, 2021, the third day after the registered mailing.

Section 47(4) of the Act states that a Tenant may dispute a Notice 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 does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenant on June 5, 2021 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of his tenancy on July 31, 2021.

I further find that the Landlord has provided sufficient evidence to demonstrate that the Landlord has sufficient Cause to end the tenancy. During the hearing, W.P. confirmed that the Tenant has paid rent in full for October 2021. I find that the Landlord is entitled to an Order of Possession effective at 1:00PM on October 31, 2021 which must be served on the Tenant. If the Tenant does not vacate the rental unit as required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective at 1:00PM on October 31, 2021 after notice is served 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: October 25, 2021

Residential Tenancy Branch