



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("the Act"), I was designated to hear an application regarding a tenancy. The Landlord applied for:

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

The Tenants did not attend the hearing, which lasted approximately 23 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 Landlord was represented by their agents, LW and SM, who were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord's agents were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Notice of Hearing was made available to the Landlord on July 7, 2021. Agent SM testified that they served the Tenants with the dispute resolution proceeding package (DRPP) by posting on the rental unit door on July 8, 2021 at 6:00 p.m. Based on the agent's undisputed testimony, I find the DRPP deemed to be received by the Tenants on July 11, 2021, three days after posting, and served pursuant to section 89(2)(d) of the Act.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover their filing fee from the Tenant?

Background and Evidence

Agent LW provided undisputed testimony regarding the following facts. This tenancy, now periodic, began December 1, 2017. Rent is now \$3050.00 a month, due on the first of the month. The Landlord currently holds a security deposit of \$1495.00.

Agent SM testified that the Landlord indicated the Tenants were repeatedly late paying rent, as supported by the Statement of Account submitted into evidence on June 11, 2021. The Statement documents rent being paid late each month from December 2020 to April 2021.

The Landlord issued a One Month Notice to End Tenancy for Cause ("the One Month Notice") on April 28, 2021. One of the reasons indicated on page 2 of the One Month Notice is that the Tenants are repeatedly late paying rent. Agent SM testified they served the One Month Notice on the Tenants by posting on the rental unit door on April 28, 2021 at 1:35 p.m. Neither of the Landlord's agents are aware of the Tenants 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 One Month Notice is deemed to be received by the Tenants on May 1, 2021, three days after posting, in accordance with sections 88 and 90 of the Act. I find that the Tenants have failed to file an application for dispute resolution within 10 days of May 1, 2021, the timeline granted under section 47(4) of the Act. Accordingly, I find that the Tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ends on the effective date of the One Month Notice, which, corrected, is June 30, 2021. While the One Month Notice indicated an effective date of May 31, 2021, as the One Month Notice is deemed received on May 1, 2021, and section 47(2) provides that a One Month Notice must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement; the original, incorrect effective date is automatically changed to June 30, 2021, per section 53 of the Act.

I find that the Landlord's One Month Notice meets the form and content requirements of section 52 of the Act as it is signed and dated by the Landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I accept the undisputed, affirmed testimony and presented evidence that the Tenants have been repeatedly late paying rent.

Therefore, in accordance with section 55 of the Act, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in their application, I find they are entitled to recover the filing fee from the Tenants under section 72 of the Act.

Conclusion

The Landlord's application is hereby granted.

I hereby grant the Landlord an Order of Possession, which must be served on the Tenants 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 an order to recover their filing fee from the Tenants. In accordance with sections 38 and 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenants' security deposit in satisfaction of this monetary award.

The security deposit for this tenancy is reduced by \$100.00 to \$1395.00.

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: October 14, 2021

Residential Tenancy Branch