



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

The agent testified that the tenant was served with this application for dispute resolution via registered mail on July 28, 2021. A Canada Post receipt containing a tracking number was entered into evidence. The Canada Post website states that the package was mailed on July 28, 2021 and was refused by the recipient. I find that the tenant was deemed served with this application for dispute resolution in accordance with sections 89 and 90 of the *Act*.

I note that Residential Tenancy Policy Guideline #12 states that where a document is served by registered mail the refusal of the party to accept or pick up the item, does not override the deeming provision

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on June 1, 2018 and is currently ongoing. Monthly rent in the amount of \$923.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the landlord. A written tenancy agreement signed by both parties was entered into evidence.

The agent testified that on May 25, 2021 the tenant was personally served with a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated May 25, 2021. The One Month Notice states that the tenant must move out of the subject rental property by June 30, 2021. The One Month Notice states the following reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park, and
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant did not file an application to dispute the One Month Notice with the Residential Tenancy Branch.

The agent testified that the tenant got a dog, contrary to section 12 of the tenancy agreement and has refused to get rid of the dog. Section 12 of the tenancy agreement states:

12. **PETS.** Unless specifically permitted in writing in advance by the landlord, the tenant must not keep or allow on the residential property any animal, including a dog, cat, reptile or exotic animal, domestic or wild, fur bearing or otherwise..... This is a material term of this Agreement....Further, if the landlord gives notice to the tenant to correct any breach and the tenant fails to comply within a reasonable time, the landlord has a right to end the tenancy along with making the appropriate claims against the tenant....

The agent testified that the tenant was sent a breach letter of May 14, 2021 which states:

During our caretakers most recent inspection of the property, it has come to our attention that the property has not been kept up to the standards as agreed to in the Residential Tenancy Agreement (does not fall under reasonable wear and tear) and the following was noted and documented:

1. Very dirty throughout, including the carpets;
2. Drywall damage(s);
3. Door damage;
4. Dirt bike and lawnmower kept in living room; and
5. Unauthorized dog on property [**must ask owner for permission**].

Please accept this letter as notice that the above is in violation of the Residential Tenancy Agreement and we ask that you repair the noted damages, at your cost, and perform a general cleaning throughout to return the property to a reasonable standard and health and cleanliness by **May 24, 2021**.

The agent testified that most of the drywall damage was repaired but the tenant has refused to get rid of the dog.

Analysis

I accept the agent's undisputed testimony that the tenant was personally served with the One Month Notice on May 25, 2021.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

The tenant did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being June 30, 2021. As the tenant did not vacate the subject rental property on that date, I award the landlord an order of possession effective November 30, 2021. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on November 30, 2021, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to sections 47 and 55 of the *Act*, I grant an Order of Possession to the landlord effective at 1:00 p.m. on November 30, 2021. 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: November 08, 2021

Residential Tenancy Branch