



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 non-payment of rent pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Neither the tenant nor a representative for the tenant attended this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. Pursuant to Rule 7.1 and 7.3 of the Rules of Procedure, the hearing was conducted in the tenant's absence.

The landlord's representatives [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 landlords and I were the only ones who had called into this teleconference.

The landlord testified she served the tenant with the notice of dispute resolution form and supporting evidence package by posting it on the door of the rental unit on September 2, 2021, at 1:18 p.m. I find that the tenant was deemed served with this package on September 5, 2021, three days after the landlord posted it, in accordance with sections 88, 89, and 90 of the Act.

At the outset, I advised the landlords of Rule 6.11 of the Rules of Procedure that prohibits participants from recording the hearing. The landlords confirmed that they were not recording the hearing. I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in the hearing.

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession;

- 2) recover the filing fee.

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2017. Monthly rent is \$685.00 and is payable on or before the first of each month. The terms of the tenancy agreement included a security deposit in the amount of \$475.00. The tenant did not pay the landlords a security deposit despite a written request to do so.

The Notice to End Tenancy submitted into evidence was signed on June 8, 2021, on form #RTB-33 provided by the Residential Tenancy Branch. The notice sets out that the tenancy was to end due to repeated late rent payments. The Notice to End Tenancy describes the following:

Tenant agreed to an arrears repayment plan for arrears going back to June 2019. No rent paid in January 2021 or February 2021, eviction Sent, tenant made a payment. March 2021 rent was late. April rent late. 10-day eviction sent, letter advising that the next late payment would result in an eviction for chronic late payment. May rent was late. June rent cheque came back as NSF.

Since the One Month Notice to End Tenancy was issued, the tenant has paid no rent since July 2021. The landlord has made several attempts to work with the tenant writing off arrears in rent and entering into repayment agreements. The tenant complied initially with the agreements and then lapsed into previous patterns of non-payment of rent and NSF cheques.

The landlord came close to sending the tenant an eviction notice in January 2020, then COVID hit. The landlord testified that at that time, the tenant was in arrears on rent again. The landlord attempted to work with the tenant on another arrear's repayment plan, scheduling additional payments for the arrears in the amount of \$50 per month, fully aware that they would not recoup the total rent owed.

On June 3, 2021, the tenant issued the landlord a cheque for a substantial arrears' payment. The cheque was returned NSF. Although the 30-Day Notice was issued, the landlord was willing to work with the tenant's advocate to have Income Assistance issue rent cheques directly to the landlord as well as deal with other issues. In November 2021, the tenant fired her advocate and became very adversarial and told the landlord she would "see them at the hearing in December".

The tenant stopped paying hydro and the power to the unit was turned off. The landlord issued the tenant a Notice to enter the unit and found the fridge “destroyed” and the unit in “excessively bad shape”.

Analysis

The landlord applies for an order of possession and return of their filing fee.

Pursuant to s. 47(1)(b) of the *Act*, a landlord may end a tenancy if:

(b) the tenant is repeatedly late paying rent.

I have reviewed the Notice to End Tenancy submitted into evidence by the landlord and find that it complies with the formal requirements set out under s. 52 of the *Act*, viz., it is signed and dated by the landlord, gives the address of the rental unit, states the correct effective date, states the grounds for the notice and is in the approved form. I find the Notice to End Tenancy is valid.

When a tenant receives a One-Month Notice to End Tenancy issued under s. 47, the tenant must, within 10-days, dispute the notice with the Residential Tenancy Branch. The top of the Notice to End Tenancy states:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400-5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

The tenant failed to file a dispute form at all. Given this, s. 47(5) is applicable and I find that the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. Since the tenant continues to reside in the rental unit, the landlord is entitled to an order of possession pursuant to s. 55.

Pursuant to s. 72(1) of the *Act*, as the landlord has been successful in the application, they may recover their filing fee of \$100.00 from the tenant.

Conclusion

Pursuant to s. 55, I grant the landlord’s application to end tenancy under s. 46
[landlord’s notice: non- payment of rent]/

The tenant shall provide vacant possession of the rental unit to the landlord no later than **two-days** after being served with the order by the landlord.

If the tenant does not comply with the order for possession, it may be filed with the Supreme Court of British Columbia and enforced as an order of that Court.

As the landlord was successful on their application, they are entitled to the \$100.00 filing fee.

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: December 20, 2021

Residential Tenancy Branch