



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lookout Housing and Health Society
and [tenant name suppressed to protect privacy]

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 pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 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 (the "landlord") who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence in person on September 9, 2021. Based on the undisputed testimony I find that the tenant was served with the landlord's materials on September 9, 2021 in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing a typographic error was noted in the name of the landlord in their application. The error was corrected and the correct names of the parties are used in the style of cause for this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence on the following facts. This periodic tenancy began in 2017. The monthly rent is \$375.00 payable on the first of each month. A security deposit of \$187.50 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a suite in a multi-unit building of 48 units.

The tenant has caused disturbance to the other residents of the property by causing loud noises at all hours, keeping clutter and garbage in the common area halls and engaging in aggressive interactions with others.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 19, 2021 indicating the reasons for the tenancy to end as:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to do so

The 1 Month Notice was personally served on the tenant on July 19, 2021 by the landlord's agent PB. The landlord is unaware of the tenant filing an application to dispute the notice.

The landlord submitted into evidence multiple warning letters issued to the tenant and incident reports about the various infractions.

Analysis

Section 47 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 accept the evidence that the landlord's agent PB personally served the 1 Month Notice on the tenant on July 19, 2021. I find that the tenant has failed to file an application for dispute resolution within 10 days of July 19, 2021, the timeline granted under section 47(4) of the *Act*, or at all. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, August 31, 2021.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I am satisfied with the evidence of the landlord including their undisputed testimony, the multiple written warnings issued to the tenant, incident reports and photographs that the tenant has significantly interfered with other occupants of the building and caused unreasonable disturbance. I therefore find there was a basis for the issuance of the notice.

Therefore, in accordance section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession. As the effective date of the 1 Month Notice has passed I issue an order enforceable 2 days after service.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 from \$187.50 to \$87.50.

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 23, 2021

Residential Tenancy Branch