



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Affordable Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant 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 other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by its agent, JR (“landlord”). The landlord testified that the Notice of Dispute Resolution Proceedings package was served to the tenant at her residential address on September 23, 2021 by registered mail. The tracking number for the mailing is recorded on the cover page of this decision. In accordance with sections 89 and 90 of the Act, the tenant is deemed served with the Notice of Dispute Resolution Proceedings package on September 28th, five days after it was sent by registered mail.

This hearing proceeded in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following testimony. The tenancy began on December 11, 2020 with rent set at \$960.00 per month payable on the first day of the month. A security deposit of \$480.00 and a pet damage deposit of \$480.00 was collected at the commencement of the tenancy. Clause 20 of the submitted tenancy agreement prohibits smoking, vaping, tobacco and cannabis consumption.

The landlord testified that due to the issue of some of the building tenants smoking, at least three notices were placed in high traffic areas of the building throughout 2021. The notices dated June 10, 2021 and June 30, 2021 advise that tenants found smoking would be issued an eviction notice and no further warnings will be issued.

After an inspection done on August 9, 2021 where staff at the housing society verified smell of smoke in the tenant's unit, the landlord issued a 1 Month Notice to End Tenancy for Cause on August 11th. The landlord served the notice by attaching a copy of it to the tenant's door on August 11th. A signed, witnessed proof of service document was provided as evidence by the landlord, as was a copy of the notice to end tenancy.

The notice, drafted using form rtb-33, states the address of the rental unit, is signed and dated, provides an effective (move-out) date of September 30, 2021, and states the reason for ending the tenancy is for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Based on the undisputed evidence and testimony of the landlord, I deem the tenant sufficiently served with the 1 Month Notice to End Tenancy for Cause on August 14, 2021, three days after it was posted to the tenant's door in accordance with sections 88 and 90 of the Act.

I have reviewed the landlord's notice to end tenancy and find it complies with the form and content provisions of section 52, in accordance with section 47(3) of the Act. I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant has not made application to dispute the notice as required by section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by September 30, 2021. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service. 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 within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application. The landlord continues to hold the tenant's security and pet damage deposits and in accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$100.00 of the tenant's security deposit in full satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: January 20, 2022

Residential Tenancy Branch