



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bros Agencies Ltd.
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 agents, EH and KW. The landlord EH testified that the tenant was served with the Notice of Dispute Resolution Proceedings by registered mail on September 21, 2021, sending it to the tenant’s residential address. The tracking number is recorded on the cover page of this decision. The tenant is deemed sufficiently served with the Notice of Dispute Resolution Proceedings package on September 26, 2021, five days after the day it was sent by registered mail, pursuant to sections 89 and 90 of the Act.

This hearing was conducted 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 undisputed testimony. This tenancy began with a previous property management company in June, 2017. Rent is currently set at \$685.00 per month.

On July 31, 2021, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the tenant's door. A witnessed, signed proof of service document was provided as evidence and the landlord's agent, KW testified he witnessed the notice to end tenancy being posted to the tenant's door on July 31st.

The notice to end tenancy states:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The landlord directed my attention to the multiple letters of concern from residents of the residential property who state the tenant has been driving fast in the parking lot with disregard for the safety of others including the elderly and children. She also parks her car in the handicapped parking stall, reserved for a person with mobility issues.

The landlord testified that since serving the notice to end tenancy upon the tenant, the tenant has not filed an application to dispute it, to her knowledge.

Analysis

Based on the undisputed evidence of the landlord and the proof of service document provided, I deem the tenant served with the landlord's notice to end tenancy on August 3, 2021, three days after it was posted to the tenant's door, pursuant to sections 88 and 90 of the Act.

Sections 47(3)(4) and (5) of the Act state:

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and

(b) must vacate the rental unit by that date.

I have reviewed the landlord's notice to end tenancy and I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days, by August 13, 2021 or attend the scheduled Dispute Resolution Hearing. Since the tenant did not file for dispute resolution, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit.

The effective date is automatically changed to September 30, 2021 pursuant to section 53 of the *Act*. As the tenant has not vacated the rental unit by the corrected effective date of September 30th, the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

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. 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 21, 2022

Residential Tenancy Branch