



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:

1. An Order of Possession for Cause pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, JN, and the Tenant, CW, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the Tenants with the One Month Notice via registered mail on October 1, 2021 (the "One Month Notice"). JN referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the One Month Notice was served on the Tenants on October 6, 2021 pursuant to Sections 88(c) and 90(a) of the Act.

JN served the Notice of Dispute Resolution Proceeding package for this hearing to the Tenants via Canada Post registered mail on November 15, 2021 (the "NoDRP package"). JN referred me to the Canada Post registered mail tracking number as proof

of service. I noted the registered mail tracking numbers on the cover sheet of this decision. CW confirmed receipt of the NoDRP package. I find that the Tenants were deemed served with the NoDRP package for this hearing five days after mailing them, on November 20, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served additional evidence on the Tenants via Canada Post registered mail on January 10, 2022. JN referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. CW confirmed receipt of the additional evidence from the Landlord. I find that the Tenants were deemed served with the additional evidence on January 15, 2022, in accordance with Section 88(c) and 90(a) of the Act.

Preliminary Matter – Correct spelling of Tenant's name

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Landlord's application, the Landlord spelled the name of one Tenant incorrectly. In the hearing, the Tenant provided the correct spelling of her name which is reflected in the application for tenancy in this matter. The correct spelling of the Tenant's name is noted in the style of cause of this decision. I changed the Tenant's name to the correct spelling as pointed out by her and it is reflected in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession for Cause?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This periodic tenancy began on January 1, 2017. Monthly rent is \$1,573.08 payable on the first day of each month. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the Landlord.

The reasons on the One Month Notice why the Landlord was ending the tenancy was because the Tenants breached a material term of the tenancy agreement, and have not corrected it within a reasonable period of time after receiving written notice to do so. The effective date of the One Month Notice was November 30, 2021.

The Tenants did not apply for dispute resolution after receipt of the One Month Notice. The Landlord is seeking an Order of Possession for February 28, 2022.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

- 47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

...

(h) *the tenant*

(i) *has failed to comply with a material term, and*

(ii) *has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

...

(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.*

The Landlord served the Tenants with the One Month Notice by registered mail on October 1, 2021. I found the One Month Notice was deemed served on October 6, 2021. The Tenants had until October 16, 2021 to apply for dispute resolution based on the One Month Notice. October 16, 2021 was a weekend, so the Tenants had until October 18, 2021 to apply for dispute resolution. The Tenants did not apply for dispute resolution and the time to apply has expired. I find, in accordance with Section 47(5)(a) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice. I find the Landlord has met her burden of proof and is entitled to an Order of Possession pursuant to Section 55 of the Act.

As the Tenants are conclusively presumed to have accepted that the tenancy has ended, Section 55 of the Act reads as follows:

55 (2) *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

...

(b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

...

(4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*

(a) *grant an order of possession, and*

...

I find that the time to apply for dispute resolution in this file has expired. Pursuant to Section 55(4)(a) of the Act, I grant an Order of Possession to the Landlord effective on February 28, 2022 at 1:00 p.m.

In addition, having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act.

Conclusion

The Landlord is granted an Order of Possession which will be effective on February 28, 2022 at 1:00 p.m. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

The Landlord may deduct the \$100.00 application filing fee from the security deposit due to the Tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 24, 2022

Residential Tenancy Branch