



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, FFL, MNRL-S, OPR**

Introduction

This hearing dealt with two applications filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for cause pursuant to sections 47 and 55;
- Authorization to recover the filing fee from the other party pursuant to section 72;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- An order of possession for unpaid rent, pursuant to sections 46 and 55.

The tenant attended the hearing, and the landlord attended the hearing accompanied by agents, JG and AG. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord’s Notices of Dispute Resolution Proceedings and stated she had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act.

Preliminary Issue

The landlord’s agent testified that he served the tenant with an amendment seeking the monetary order and Order of Possession based on the unpaid rent by posting the amendment and evidence to the tenant’s door on December 27, 2021. In accordance with sections 88 and 90, I deem the amendment served upon the tenant on December 30, 2021, three days after it was to the tenant’s door. As the amendment was not served at least fourteen (14) days prior to the hearing, in accordance with Rules 4.3 and 4.6 of the Residential Tenancy Branch Rules of Procedure, the amendment was dismissed with leave to reapply at the commencement of the hearing.

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 evidence. He is currently the tenant's landlord and is holding the tenant's security deposit in the amount of \$350.00.

On August 3, 2021, the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by registered mail. The tracking number for the mailing is recorded on the cover page of this decision. During the hearing, the landlord consulted the Canada Post website and confirmed the notice to end tenancy was delivered on August 5, 2021. A proof of service document and a copy of the notice to end tenancy were provided as evidence.

The tenant testified she thought she filed an application to dispute the notice to end tenancy and provided the file number of the dispute which I recorded on the cover page of this decision. At the hearing, I consulted the Residential Tenancy Branch's dispute management system and noted that the tenant filed an application seeking:

- A monetary order for damages or compensation pursuant section 67;
- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 41;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- An order for repairs to be made to the unit, site or property pursuant to section 32.

After I reminded the tenant the issues she sought on her application for dispute resolution, the tenant testified she did not file an application to dispute the landlord's 1 Month Notice to End Tenancy for Cause, because she was confused by the multiple notices to end tenancy served upon her by the landlord. The tenant apologised for not filing an application to dispute the notice to end tenancy for cause.

Analysis

Based on the evidence of the landlord, I deem the tenant sufficiently served with the 1 Month Notice to End Tenancy for Cause on August 5, 2021, the day it was delivered by Canada Post pursuant to section 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.

Based on the documents provided, 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. I find that the tenant was served with a Notice that complies with section 52 of the *Act*.

Although the tenant had the opportunity to do so, she did not file an application to dispute the Notice within 10 days, by August 15, 2021 or any time thereafter. 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. Since the effective date stated in the notice to end tenancy has passed, 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*, the landlord is entitled to retain \$100.00 of the tenant's security deposit in full satisfaction of the filing fee awarded.

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 10, 2022