



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, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for Cause, pursuant to section 55 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Only the landlord's agent, J.D. attended the hearing. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord gave undisputed affirmed testimony that a 1 Month Notice for Cause was placed on the tenant's door on August 11, 2021. Pursuant to section 89 & 90 of the *Act* the tenant is deemed served with this Notice on August 14, 2021, three days after its posting.

On September 17, 2021, the landlord served the tenant by Canada Post Registered Mail with their application for dispute resolution and evidentiary package. A copy of the Registered Mail receipt was provided in evidence. Pursuant to sections 88 and 90 of the *Act*, the tenant is deemed served with these documents on September 21, 2021, five days after their mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Can the landlord recover the filing fee?

Background and Evidence

The landlord stated that this tenancy began on December 31, 2020. Rent was \$960.00 per month and a security deposit of \$480.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that she issued a 1 Month Notice to End Tenancy in August 2021 because the tenant was repeatedly smoking in the building despite warnings not to do so. The landlord said this was a non-smoking building and that numerous tenants had complained about the disturbance the tenant had caused through the continued smoking.

The tenant did not dispute this Notice to End Tenancy and did not appear at the hearing.

Analysis

Section 47(5) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the 10 days of service granted under section 47(5) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice.

I accept the landlord's undisputed testimony that the smoking has caused a significant interference to the other tenants and that the tenant has not stopped smoking despite repeated warnings not to do so.

I am therefore issuing an Order of Possession to the landlord effective 2 days after service on the tenant.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenant. Pursuant to section 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's security deposit.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I allow the landlord to retain \$100.00 from the tenant's security deposit in satisfaction for a return of the filing fee.

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: February 18, 2022

Residential Tenancy Branch