



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KITSILANO MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause, and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent, who gave affirmed testimony and called 1 witness who also gave affirmed testimony. The tenant attended the hearing with another person to assist. The tenant gave affirmed testimony and called 1 witness who also gave affirmed testimony. The parties, or their agents, were given the opportunity to question each other and the witnesses, and to give submissions.

Some of the evidentiary material of the landlord was not received within the time required under the Rules of Procedure. The tenant did not oppose inclusion of the evidence, and all evidence except the late evidence provided 6 days prior to the hearing has been reviewed, and all of that evidence relevant to the application is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy for Cause dated July 14, 2021 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on October 15, 2019 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month was originally payable, but has been increased to \$659.75 effective January 1, 2022, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house containing

10 rooms and each are rented under separate agreements, with common areas. An Application to Rent has been provided for this hearing, but not a tenancy agreement.

The landlord's agent further testified that on July 14, 2021 the caretaker served the tenant personally with a One Month Notice to End Tenancy for Cause (the Notice), and a copy has been provided for this hearing. The tenant acknowledged receipt by telephoning the landlord's agent to ask why the Notice was served. The Notice is dated July 14, 2021 and contains an effective date of vacancy of August 14, 2021. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord's agent testified to a number of allegations causing the landlord to issue the Notice.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice, and the landlord seeks an Order of Possession and a monetary order for recovery of the \$100.00 filing fee.

The landlord's witness is the caretaker of the rental home and does not reside on the rental property but goes there usually every 2 days and spends a few hours cleaning.

The witness testified that the tenancy began on November 1, 2019 but the tenant was permitted to occupy the rental unit 5 days earlier. Rent in the amount of \$659.75 is payable at the end of the month for the following month.

On July 14, 2021 the witness served the tenant with a One Month Notice to End Tenancy for Cause. The witness knocked on the tenant's door and no one answered, so the witness slid the Notice under the tenant's door.

The landlord's witness also testified to allegations to substantiate the reasons for issuing the Notice.

The tenant testified that he was never served with a notice to end the tenancy, and rebuts the testimony of the landlord's agent that he contacted her to ask what the Notice was for, testifying that if he had received it, he wouldn't need to ask.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In the case of a One Month Notice to End Tenancy for Cause, the tenant must dispute it within 10 days of receipt, or deemed receipt. If the tenant fails to dispute it, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the Notice.

In this case, I have 3 different versions of events with respect to service: that it was served personally on July 14, 2021; that it was slid under the tenant's door on July 14, 2021; that it wasn't served at all. The onus is on the landlord to prove service. The landlord has not provided a proof of service document and there are no witnesses to substantiate how and when the tenant was served. Since I cannot be satisfied that the landlord has served the Notice or how or when, I dismiss the landlord's application for an Order of Possession.

Since the landlord has not been successful with the application, the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

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 10, 2022