



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Makola Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFT

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 20, 2021, in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the undisputed evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on October 31, 2019 for a month-to-month tenancy beginning on November 1, 2019 for a monthly market rent of \$810.00 due on the 1st day of each month with a security deposit of \$405.00 paid.

The landlord also submitted a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on October 13, 2021 with an effective vacancy date of December 1, 2021 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

and put the landlord's property at significant risk and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Events section of the Notice the landlord has listed several days in September and October 2021 where the landlord made or received reports that the tenant was smoking in the rental unit and that a breach letter was delivered on September 10, 2021.

The landlord provided that they posted the One Month Notice to End Tenancy on the rental unit door on October 13, 2021

The tenant testified that the landlord's agent never saw her smoke in the rental unit but rather she saw the tenant's ashtray. The tenant stated that she only smoked on her balcony.

The tenant confirmed that she had received the One Month Notice to End Tenancy for Cause issued by the landlord, but she could not remember, specifically, when she received it. She also confirmed that she had not filed an Application for Dispute Resolution with the Residential Tenancy Branch, seeking to dispute the Notice.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Put the landlord's property at significant risk; and
- b) 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.

Section 47(4) allows a tenant to dispute a notice under Section 47 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. Based on the submissions of both parties, I find the tenant received the Notice to End Tenancy on October 16, 2021. As such, I find the tenant had until October 26, 2021 to submit an Application for Dispute Resolution seeking to cancel the One Month Notice. There is no evidence before me that the tenant submitted an Application to dispute the notice at all.

Section 47(5) stipulates that if a tenant fails to dispute a One Month Notice pursuant to Section 47(4) the tenant is conclusively presumed to have accepted the end of the tenancy and they must vacate the rental unit.

Based on the above, I find the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit, pursuant to Section 57(5).

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the filing fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 28, 2022

Residential Tenancy Branch