



Dispute Resolution Services

Page: 1

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:

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and the caretaker of the subject rental building attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, caretaker and I were the only ones who had called into this teleconference.

The landlord and caretaker were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord and the caretaker testified that they are not recording this dispute resolution hearing.

The landlord confirmed their email address for service of this decision and order.

The landlord testified that the tenant was served with a copy of this application for dispute resolution via registered mail on December 10, 2021. A Canada Post registered mail receipt stating same was entered into evidence. The customer receipt was also entered into evidence and states the tenant's name and address. I find that the tenant

was deemed served with the landlord's application for dispute resolution on December 15, 2021, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Issue to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and the caretaker, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord and caretaker's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on October 28, 2015 and is currently ongoing. Monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit of \$250.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a One Month Notice to End Tenancy for Cause dated October 7, 2021 (the "Notice"), was posted on the tenant's door on October 7, 2021. A witnessed proof of service document stating same was entered into evidence. The Notice was entered into evidence and states the following reasons for ending the tenancy:

- 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; and
 - put the landlord's property at significant risk.

The landlord testified that the tenant has not served her with any documents pertaining to the Notice. The tenant did not file an application for dispute resolution with the Residential Tenancy Branch to dispute the Notice.

The landlord testified that the tenant was served with the Notice because he is verbally aggressive with the caretaker, other tenants, and the landlord's contractors.

The caretaker testified that the subject rental property is a single room occupancy and that bathroom facilities are shared. The caretaker testified that the tenant wears only underwear to and from the bathroom and refuses to cover up. The caretaker testified that the tenant became verbally abusive when he asked him to put clothes on. The caretaker testified that his contractors such as pest control will not enter the tenant's suite due to his aggressive behaviour.

The landlord testified that she is seeking an Order of Possession effective March 31, 2022, which recognizes that the tenant has paid March 2022's rent.

Analysis

Based on the landlord's testimony and the witnessed proof of service document entered into evidence, I find that the tenant was deemed served with the Notice on October 10, 2021, three days after it was posted on the tenant's door, pursuant to sections 88 and 90 of the *Act*.

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Section 55(2)(b) of the *Act* states:

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.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being November 30, 2021. Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to an Order of Possession effective at 1:00 p.m. on March 31, 2022. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on March 31, 2022, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55(2)(b) of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on March 31, 2022**, which should be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: March 24, 2022

Residential Tenancy Branch