



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On January 11, 2022 the Landlord applied for:

- an order of possession, having issued a One Month Notice to End Tenancy for Cause, dated December 22, 2021 (the One Month Notice); and
- the filing fee.

The hearing started promptly and was attended by the Landlord and his advocate (SM); the Tenant did not attend. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

SM testified that the Notice of Dispute Resolution Proceeding (NDRP) and evidence was posted to the Tenant's door on January 25, 2022. SM testified that the NDRP and evidence was also served on the Tenant by registered mail on January 27, 2022, and provided a tracking number, as noted on the cover page of this decision. Based on SM's undisputed testimony, I find the NDRP and evidence served on the Tenant on January 25, 2022 in accordance with section 89 of the Act, and deem them received by the Tenant on January 28, 2022, in accordance with section 90 of the Act.

Preliminary Matter

At the beginning of the hearing, SM submitted that they had filed an amendment to add to the Landlord's claims in this hearing; however, there was no such amendment on file. I do note that the parties have an upcoming hearing, the file number of which is noted on the cover page of this decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord provided the following particulars regarding the tenancy. It began July 1, 2021; rent is \$765.00, due on the first of the month; and the Tenant paid a security deposit of \$380.00, which the Landlord still holds.

A copy of the One Month Notice is submitted as evidence. It is signed and dated by the Landlord's agent, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy, and is in the approved form.

SM testified he served the One Month Notice on the Tenant by posting it to door on December 22, 2021 at 5:00 p.m. SM and the Landlord both testified they are not aware of the Tenant filing an application to dispute the Notice. One of the reasons indicated on page 2 of the One Month Notice is that the Tenant is repeatedly late paying rent.

The Landlord testified that the Tenant was late with rent in September 2021, October 2021, and December 2021, and has not paid rent for January–April 2022. In support, the Landlord submitted as evidence a copy of the Tenant's returned rent cheque dated October 1, 2021, and a copy of a 10 Day Notice, dated December 2, 2021, issued for rent due on December 1, 2021.

Analysis

Section 47(4) of the Act provides that upon receipt of a One Month Notice, 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 One Month Notice is deemed received by the Tenant on December 25, 2021, three days after posting, in accordance with sections 88 and 90 of the Act.

I find that the Landlord's One Month Notice meets the form and content requirements of section 52 of the Act as it is signed and dated by the Landlord's agent, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the Tenant has failed to file an application for dispute resolution within 10 days of December 25, 2021, the timeline granted under section 47(4) 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 ends on the effective date of the One Month Notice, January 31, 2022, and must vacate the rental unit.

Therefore, in accordance with section 55 of the Act, I find that the Landlord is entitled to an order of possession.

As SM has testified that the Tenant still occupies the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, April 11, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord is successful in his application, I order the Tenant to pay the \$100.00 filing fee the Landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the Landlord to retain \$100.00 of the Tenant's security deposit in satisfaction.

The security deposit for this tenancy is reduced by \$100.00 to \$280.00.

Conclusion

The Landlord's application is granted.

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenant. The order of possession must be served on the Tenant. The order of possession 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: April 11, 2022

Residential Tenancy Branch