



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPC

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 section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing with their agent, and both were given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent, and I were the only ones who had called into this teleconference for this hearing.

The parties were clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The parties confirmed that they understood.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on January 28, 2022. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on February 2, 2022, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 1 Month Notice dated December 20, 2021 by way of registered mail. The landlord provided proof of service in their

evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on December 25, 2021, 5 days after mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This fixed-term tenancy began on February 1, 2021, with monthly rent currently set at \$1,300.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$650.00, which the landlord still holds.

The tenant was served with a 1 Month Notice on December 20, 2021 for causing a significant disturbance. The tenant has not disputed the 1 Month Notice, nor has the tenant moved out by the effective date of January 31, 2022. The landlord provided a copy of a Mutual Agreement to end tenancy signed by both parties to terminate the tenancy as of June 30, 2022. The landlord is requesting an Order of Possession for that date.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. As the tenant was not present to confirm the settlement reached between the parties, I am unable to confirm the settlement. However, the landlord has consented extending the Order of Possession to June 30, 2022, which is the date agreed on by both parties if the landlord was successful in obtaining an Order of Possession.

A copy of the 1 Month Notice was submitted by the landlord for this hearing, and I find that the landlord's 1 Month Notice complies with section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten 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 an application for dispute resolution within the ten days of service 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 ended on the effective date of the 1 Month Notice.

In this case, this required the tenant and anyone on the premises to vacate the premises by January 31, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. As the landlord had agreed to extend the effective date, the landlord will be provided with an Order of Possession for June 30, 2022.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

The landlord continues to hold the tenant's security deposit of \$650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on June 30, 2022**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the monetary award.

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 19, 2022

Residential Tenancy Branch