



Dispute Resolution Services

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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 co-owner of the subject rental property 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, co-owner and I were the only ones who had called into this teleconference.

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

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed his 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 February 10, 2022. The landlord provided the tracking number in the hearing, and it is located on the cover page of this decision. I find that the tenant was deemed served with the landlord's application for dispute resolution on February 15, 2022, five days after its registered mailing, pursuant to sections 89 and 90 of the *Act*.

Issues 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 co-owner, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord and co-owner's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on May 15, 2008. Monthly rent in the amount of \$836.80 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by the tenant and a copy was submitted for this application.

The landlord testified that on January 3, 2022 he posted a One Month Notice to End Tenancy for Cause (the "One Month Notice") on the tenant's door and left a copy in the tenant's mailbox. The landlord testified that he took photographs of same on January 3, 2022 and sent the photographs via text to the co-owner on January 3, 2022. The above photographs dated January 3, 2022 were entered into evidence. The co-owner testified that she received the above photographs on January 3, 2022.

The tenant has not filed to dispute the One Month Notice. The landlord testified that the tenant is still residing in the subject rental property.

The One Month Notice states the following reason for ending the tenancy:

- Tenant is repeatedly late paying rent.

The One Month Notice states that the effective date of the One Month Notice is February 28, 2011.

The landlord testified that the tenant has been late paying rent every month from June 2021 to January 2022.

Analysis

I accept the landlord's undisputed testimony that the tenant was served with a copy of the One Month Notice via posting and leaving a copy in the tenant's mailbox on January 3, 2022. The landlord's undisputed testimony is supported by the dated photographs of the above service. I find that the tenant was deemed served with the One Month Notice on January 6, 2022, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end a tenancy 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Section 68(1) of the *Act* states that a notice to end tenancy that does not comply with section 52 may be amended if:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find that the effective date on the One Month Notice contains an obvious typo, that being that the effective year is listed as 2011, when it should have read 2022. I find that the tenant knew or should have known that the effective date of the One Month Notice was not 11 years in the past but should have read February 28, 2022. Pursuant to section 68(1) of the *Act*, I amend the One Month Notice to state the effective date as February 28, 2022.

Upon review of the amended One Month 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 One Month 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 amended effective date of the One Month Notice, that being February 28, 2022. 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 May 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 May 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 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on May 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.

The landlord is entitled to retain \$100.00 from the tenant's security deposit.

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: May 05, 2022

Residential Tenancy Branch