



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KSRE MARLBOROUGH LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On April 7, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

B.S. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

B.S. advised that the Notice of Hearing package was served to the Tenant by registered mail on April 23, 2022, and the Tenant confirmed that he received this. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been duly served the Landlord’s Notice of Hearing package.

She then advised that the Landlord’s evidence was served to the Tenant by registered mail on July 11, 2022 (the registered mail tracking number is noted on the first page of this Decision). She stated that this package was not accepted and was returned to

sender. The Tenant stated that he did not receive this package. Based on the evidence before me, I am satisfied that the Landlord's evidence was served in a manner in accordance with Section 88 of the *Act* and in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure. As such, I find that the Tenant was deemed to have received this evidence five days after it was mailed. As a result, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that he served his evidence to the Landlord by placing it in the property manager's mailbox on July 1, 2022. B.S. confirmed that she received this evidence. As the Tenant's evidence was served in a manner in accordance with Section 88 of the *Act* and in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 1, 2013. However, B.S. was unsure of how much rent was, or how much of a security deposit or pet deposit was paid, as the Landlord purchased the rental unit in October 2021 and was provided with only a portion of the tenancy agreement.

The Tenant advised that rent was currently established at \$617.00 per month and was due on the first day of each month. As well, he stated that a \$300.00 security deposit was paid. Both parties submitted a portion of the tenancy agreement as documentary evidence for consideration.

B.S. testified that the Notice was served to the Tenant by being posted on his door on February 11, 2022, and the Tenant confirmed that he received this Notice on or around February 13, 2022. The reason the Landlord served the Notice is because the "Rental unit/site must be vacated to comply with a government order." The effective end date of the tenancy was noted on the Notice as March 31, 2022.

The Tenant acknowledged that he did not dispute the Notice because he did not realize that he was required to. Although, he testified that he did contact the Compliance and Enforcement Unit of the Residential Tenancy Branch and that he also spoke with Information Officers.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Notice served to the Tenant on February 11, 2022, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

The undisputed evidence is that the Notice was posted to the Tenant's door on February 11, 2022 and the Tenant confirmed that he received this Notice on or around February 13, 2022. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* states that "*If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.*"

After receiving the Notice, the tenth day fell on Wednesday February 23, 2022 and the undisputed evidence is that the Tenant did not dispute this Notice at all. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 47(5) of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlord effective on **August 31, 2022 at 1:00 PM after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective on **August 31, 2022 at 1:00 PM after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. 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: August 4, 2022

Residential Tenancy Branch