



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This matter was convened to address an Application for Dispute Resolution made by the Landlord on April 19, 2022. The Landlord sought the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order of possession based on an undisputed One Month Notice to End Tenancy dated January 25, 2022 (the One Month Notice); and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by JW and AM. The Tenant attended the hearing and was accompanied by NT, an advocate. All in attendance provided a solemn affirmation.

On behalf of the Landlord, AM confirmed that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding package by registered mail on April 30, 2022. The Tenant acknowledged receipt of these documents. No issues were raised with respect to service or receipt of these documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenant did not submit documentary evidence in response to the application.

At the beginning of the hearing, the parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in 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 parties confirmed the tenancy began in 2016, and that the Tenant currently pays subsidized rent of \$328.00 per month. The parties disagreed with respect to the amount of the security deposit paid at the beginning of the tenancy.

On behalf of the Landlord, AM confirmed that the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on January 25, 2021, and that service in this manner was witnessed by HP. Copies of the One Month Notice and a signed Proof of Service Notice to End Tenancy document were submitted in support. The One Month Notice is signed and dated, 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.

The Tenant testified that the One Month Notice was never received as alleged. Further, NT submitted that the Tenant is disabled and suggested that someone else might have removed the notice. NT testified the Tenant will almost certainly end up homeless if the tenancy is ended. As noted above, no evidence was submitted by the Tenant despite the time that has passed since the Notice of Dispute Resolution Proceeding package was received.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In this case, I find that the One Month Notice was served on the Tenant by attaching a copy to the Tenant's door on January 25, 2022. This finding is supported by the evidence of AM and the signed Proof of Service Notice to End Tenancy document. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. Therefore, I find the One Month Notice is deemed to have been received by the Tenant on January 28, 2022.

Pursuant to section 47(4) of the Act, the Tenant had 10 days after receipt of the One Month Notice – until February 7, 2022 – to dispute it by filing an application for dispute resolution. I find that the Tenant did not dispute the One Month Notice.

On examination, I find the One Month Notice complies with the form and content requirements of section 52 of the Act.

Considering the above, and pursuant to section 47(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, which was February 28, 2022. The Tenant must vacate the rental unit.

The Landlord is entitled to an order of possession. During the hearing, AM confirmed that if successful, the Landlord agrees to an effective date of August 31, 2022.

Having been successful, I also find the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application.

Conclusion

The Landlord is granted an order of possession which will be effective on August 31, 2022, at 1:00 p.m. The order of possession must be served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order for \$100.00 in recovery of the filing fee. The monetary order must be served on the Tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 18, 2022

Residential Tenancy Branch