



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent"), the landlord's associate operations manager (the "manager") and the landlord's associate manager of administration (the "associate") 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 agent, the manager, the associate (the "landlord's representatives") and I were the only ones who had called into this teleconference.

The landlord's representative were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord's representative 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 agent confirmed the landlord's email address for service of this decision and order.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via posting on September 20, 2022. A witnessed proof of service document stating same was entered into evidence. I find that the above documents were served on the tenant in accordance with section 89(2) and section 88 of the *Act*.

Issue

Is the landlord entitled to an Order of Possession for Cause, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's representatives, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's representatives' claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on June 1, 2008. Monthly rent in the amount of \$348.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The manager testified that she posted a One Month Notice to End Tenancy for Cause (the "Notice") on the tenant's door on July 29, 2022 and that this service was witnessed by the associate. The associate testified that she witnessed the manager post the Notice on the tenant's door on July 29, 2022.

The Notice was entered into evidence, is signed by the manager, is dated July 29, 2022, gives the address of the rental unit, states that the effect date of the notice is August 30, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The details of cause section of the Notice states:

The tenant screams all through the night and is keeping her neighbour up all night. The neighbour mental and physical health is suffering. The tenant also threatened the neighbour.

The tenant did not dispute the Notice.

The agent testified that the landlord is not seeking a two-day Order of Possession and is willing to allow the tenant to stay until November 15, 2022.

Analysis

Based on the undisputed testimony of the manager and the associate, I find that the Notice was posted on the tenant's door on July 29, 2022 and that the tenant was deemed served with the Notice on August 1, 2022, in accordance with sections 88 and 89 of the *Act*.

Upon review of the Notice I find that it meets the form and content requirements of section 52 of the *Act* because it:

- is signed and dated by an agent of the landlord,
- gives the address of the subject rental property,
- states the effective date of the notice,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #33.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 47(2) is September 30, 2022. I find that the corrected effective date of the Notice is September 30, 2022.

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 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 corrected effective date of the Notice, that being September 30, 2022. Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to an Order of Possession. I award the landlord an Order of Possession effective at 1:00 p.m. on November 15, 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 November 15, 2022, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective at **1:00 p.m. on November 15, 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.

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: October 21, 2022

Residential Tenancy Branch