



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

On June 9, 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*.

Both the Landlord and the Tenant attended the hearing. 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.

The Landlord advised that the Notice of Hearing and evidence package was served to the Tenant by hand and by registered mail on June 24, 2022, and the Tenant confirmed that he received this package. 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.

He then advised that he amended the Application and served this to an adult that lived with the Tenant on October 6, 2022. Moreover, he stated that he served additional evidence to this same adult on October 7, 2022. The Tenant confirmed that he received

these documents as well. Based on this undisputed evidence before me, I am satisfied that the Landlord's Amendment and additional 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 have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant advised that he emailed his evidence to the Residential Tenancy Branch on October 19, 2022, according to instructions that he was provided. As well, he stated that he emailed this evidence to the Landlord on the same day. The Landlord confirmed that the only email he received from the Tenant was on October 19, 2022, but there was no evidence attached.

Records on file do not indicate that any evidence was uploaded into the Dispute Management System on this file from the Tenant. As explained to the Tenant, even if he uploaded this evidence into the system and served this evidence to the Landlord on October 19, 2022, this evidence would not have met the timeframe requirements of Rule 3.15 of the Rules of Procedure, and as a result, could possibly have been excluded in any event.

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 a 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 most current tenancy started on July 1, 2017. The Landlord advised that rent was originally established at \$1,300.00 per month, but it was reduced years ago, and then subsequently increased to the current amount of \$1,268.75 per month. Regardless, rent was due on the first day of each month. As well, he stated that a security deposit of \$600.00 was initially paid; however, he agreed to permit the Tenant to use that towards rent with the condition that he pay \$150.00 per month to top this back up, but the Tenant never paid this amount back. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Tenant agreed that rent was originally set at \$1,350.00 per month, that it was reduced to \$1,250.00, and that it was subsequently increased to \$1,268.75, but he claimed that the circumstances for the changing amount of rent differed from the Landlord's account. Regardless, he agreed that rent was due on the first day of each month. As well, he testified that he never paid a security deposit to the Landlord, despite the Landlord's testimony.

The Landlord submitted that the Notice was served to the Tenant by posting it to the Tenant's door on May 23, 2022, and the Tenant confirmed that he received this Notice. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The effective end date of the tenancy was noted as June 30, 2022, on the Notice.

The Tenant acknowledged that he did not dispute the Notice, and the reason for this was because he worked late into the night. As well, he claimed to have paid some rent that was owed, and it appeared that it was his belief that this would then cancel the Notice.

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 May 23, 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 before me is that the Notice was posted to the Tenant's door on May 23, 2022, and the Tenant confirmed that he received this Notice; however, he was not sure when exactly. 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."*

Given that this Notice was posted to the Tenant's door, he would have been deemed to have received this on May 26, 2022, at the latest, and there is no dispute that the Tenant did receive this Notice. As such, taking May 26, 2022 as the date he was deemed to have received the Notice, the tenth day to dispute this Notice fell on June 6, 2022. 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 **October 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. However, as there appears to be no security deposit to deduct this from, I grant the Landlord a Monetary Order in the amount of **\$100.00** to satisfy this debt.

Conclusion

I grant an Order of Possession to the Landlord effective on **October 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2022

Residential Tenancy Branch