



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant acknowledged receipt of the landlord’s application and evidence package.

The landlord testified she was not served with the tenants’ application. The tenant could not provide details of the date and time of service of the application. The tenant testified she handed it to the landlord at the landlord’s office. The landlord testified she was not served anything by hand. The tenant then stated she is not sure if she served the landlord and said she has not been doing very good lately. The tenant stated she had ended up in the hospital so could not provide her side of the evidence either. The tenant made no submissions of hospital records in support of the above.

Based on the above testimony of the parties, I am not satisfied that the landlord was ever served with the tenants’ Application for Dispute Resolution. Accordingly, the

tenants' application is dismissed and the hearing proceeded on the merits of the landlord's application only.

Issues

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on May 1, 2016. The current monthly rent is \$1316.00 payable on the 1st day of each month. The tenants paid a security deposit of \$587.50 and a pet deposit of \$587.50 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on August 10, 2022, she served the tenants with the One Month Notice by posting a copy to the door of the rental premises.

The tenants acknowledged receipt of the One Month Notice.

Analysis

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving a notice to end tenancy. Under this section, the tenant may make a dispute application within ten days of receiving the One Month Notice. If the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice. A notice given under this section must comply with the form and content requirements of section 52 of the Act.

Section 52 of the Act states as follows:

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, and
- (e) when given by a landlord, be in the approved form.

I find that the One Month Notice served by the landlord is in compliance with the form and content requirements of section 52 of the Act. The Notice was signed and dated by the landlord, provided the address of the rental unit, stated the effective date of the Notice, stated the grounds for ending the tenancy and was in the approved form.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, the tenants' application is dismissed in its entirety as the tenants failed to serve the landlord with their application.

Therefore, the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

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. This amount can be retained from the tenants' security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants 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: November 08, 2022

Residential Tenancy Branch