



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

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 sections 47 and 55; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant, the tenant's roommate and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution on July 14, 2022 via registered mail. A receipt for same was entered into evidence. The tenant testified that he received the above package around that time but

did not know the specific date. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

The agent testified that the tenant was served with the landlord's evidence via registered mail on October 26, 2022. The agent provided the tracking number for the above registered mailing which is located on the cover page of this decision. The tenant testified that he did not receive the above package. The Canada Post website states that the above package was mailed on October 26, 2022 and that on October 28, 2022 a notice card was left indicating where and when to pick up the registered mail. On November 2, 2022 a final notice card was left and on November 14, 2022 the item was returned to sender.

I find that the landlord served the tenant with the landlord's evidence in accordance with section 89 of the *Act*. I find that the tenant's failure to pick up the duly served evidence does not prevent that evidence from being accepted for consideration in this hearing. I find that the tenant was deemed served with the landlord's evidence on October 31, 2022, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The tenant did not submit or serve evidence for consideration.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on August 1, 2020. Monthly rent in the amount of \$1,220.00 is payable on the first day of each month. A

security deposit of \$600.00 was 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 landlord testified that the tenant was served with a One Month Notice to End Tenancy for Cause (the "Notice") on June 14, 2022 via registered mail. A registered mail receipt stating same was entered into evidence. The landlord also entered into evidence a Canada Post delivery confirmation printout which states that the above package was delivered on June 17, 2022. The tenant testified that he received the Notice around that date.

The tenant testified that he tried to file an application for dispute resolution to cancel the Notice but that he had problems with filing that application. The roommate testified that they received a file number but in the hearing the tenant and the roommate were unable to provide the file number.

The Residential Tenancy Branch Dispute Management system show that tenant started an application seeking to cancel the Notice, but the application was not submitted, and no filing fee was paid. The file number for the above file is located on the cover page of this decision.

The Notice was entered into evidence, is signed by the landlord, is dated June 14, 2022, gives the address of the rental unit, states that the effect date of the notice is July 31, 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;
 - put the landlord's property at significant risk.

The Details of Cause section of the Notice states:

Tenant has allowed the inside and outside of the rental unit to become unsafe and unhealthy due to volume of belongings and dangerous goods. Tenant has disturbed by the quied [sic] enjoyment of 2 other rental units and neighbours. Tenant has put the unit at risk for fire, damage, and city of Port Couquitlam [sic] by-law fines, and complaints.

The tenant testified that he cleaned up the materials he left outside and that the remainder of the materials outside is the landlord's. The tenant testified that he does not have a dangerous amount of materials stacked up in the subject rental property.

Analysis

Based on the Canada Post delivery confirmation printout I find that the tenant received the Notice via registered mail on June 17, 2022. I find that the Notice was served in accordance with section 88 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 the landlord,
- gives the address of the subject rental property,
- state the effective date of the notice,
- states the grounds for ending the tenancy, and
- is in the approved form, RTB Form #33.

Rule 2.6 of the Residential Tenancy Branch Rules of Procedure states:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

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.

I find that the application for dispute resolution that the tenant started, was not completed, and was not made in accordance with Rule 2.6 because it was not

submitted, and no filing fee was paid. It was the tenant's responsibility to file and complete an application to dispute the Notice if he wished for the tenancy to continue.

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 make an application to 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 effective date of the Notice, that being July 31, 2022.

Pursuant to section 55(2)(b) of the *Act*, the landlord is entitled to two-day Order of Possession. 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 in accordance with the Order of Possession, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenant's security deposit.

Conclusion

Pursuant to section 55(2)(b) of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant and all other occupants 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 17, 2022

Residential Tenancy Branch