



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PARKSIDE REALTY INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR-S, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for:

- an order of possession for the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) served on the tenant;
- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The landlord's agent (landlord) attended the telephone conference call hearing; the tenant did not attend, or file written evidence for the hearing.

The landlord provided their affirmed testimony. The landlord testified that they served the tenant with their application, evidence, and Notice of Hearing (application package) by attaching it to the tenant's door on or about November 16, 2022, by email, and text message. The landlord filed a photograph of the served documents on the tenant's door.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(2) of the Act and the hearing proceeded in the tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the submissions are reproduced here.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit as a result of the Notice?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the cost of the filing fee?

Background and Evidence

This tenancy began on March 1, 2019 and current monthly rent is \$1,218. The tenant paid a security deposit and pet damage deposit of \$600 each. Filed in evidence was the written tenancy agreement.

The landlord submitted evidence that they served the tenant the Notice by attaching it to the tenant's door on September 24, 2022. The Notice was dated September 24, 2022 and listed an effective end of tenancy date of October 31, 2022. The landlord filed a copy of the Notice into evidence.

The cause listed on the Notice stated that the tenant is repeatedly late paying rent.

The landlord submitted documentary evidence that the tenant has paid the monthly rent late at least 6 times in the past year, as of the date of the Notice, has paid late the past 2 months, and 21 times since the tenancy began. The landlord submitted that due to the multiple late payments, they issued the Notice. Filed in evidence was a tenant ledger sheet showing the late payments.

The landlord submitted that as of the day of the hearing, the tenant owed a total rent deficiency of \$956, which was incurred in October 2022.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find the landlord submitted sufficient evidence that the tenant was served with the Notice as declared by the landlord on September 24, 2022, by attaching it to the tenant's door, which listed a move-out date of October 31, 2022. I find the tenant was deemed to have received the Notice on September 27, 2022, three days after it was attached to the tenant's door.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such an application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, October 31, 2022.

I have no evidence before me that the tenant filed an application to dispute the Notice.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or October 31, 2022.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have reviewed the landlord's undisputed evidence and find they had sufficient cause to end the tenancy based upon the repeated late payments.

I therefore **order** the tenancy ended on October 31, 2022.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenant.

As to the landlord's claim for the unpaid rent deficiency, for applications involving a monetary claim, an applicant must serve the respondent by personal service or by registered mail (Section 89(1) of the Act). The tenant may be given the documents described in section 89 (1) of the Act by emailing a copy to an email address provided as an address for service by the tenant.

In this case, I find the landlord submitted insufficient evidence that the tenant was served by either of those two methods, as the landlord said the tenant was served by attaching the documents to the tenant's door, which is allowed for claims such as for an order of possession. I also find insufficient evidence that the tenant had given their authority that their email address be used for service of documents.

As the tenant was not served in a manner complying with section 89(1) of the Act, I **dismiss** the landlord's monetary claim, **with leave to reapply**. Leave to reapply does not extend any applicable time limitation period under the Act.

I grant the landlord recovery of the filing fee of \$100. I grant the landlord a monetary order in the amount of \$100. The monetary order must be served to the tenant to be enforceable. In the alternative, I authorize the landlord to deduct \$100 from the tenant's security deposit in satisfaction of their monetary award of \$100, pursuant to section 72(2)(b) of the Act. If the landlord deducts \$100 from the tenant's security deposit for this reason, the monetary order is cancelled and is of no force or effect.

Conclusion

The tenancy has been ordered ended on October 31, 2022.

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenant.

The landlord's monetary claim for unpaid rent is dismissed, with leave to reapply, due to the service issues listed above.

The landlord has been granted a monetary order for \$100 for the filing fee.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 13, 2023

Residential Tenancy Branch