



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HARRON INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 30, 2023 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated January 7, 2023 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Landlord's Agent A.G. and the Tenant E.W. attended the hearing at the appointed date and time. At the start of the hearing, the Landlord's Agent testified the Application and documentary evidence package was served to the Tenant by registered mail on February 7, 2023. The Landlord submitted a registered mail receipt confirming the mailing. The Tenant stated that they did not receive the Registered Mailing.

Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on February 12, 2023, the fifth day after the registered mailing. The Tenant did not submit any evidence in response to the Application.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties confirmed the following terms of the tenancy; the tenancy began on January 1, 2020. Currently rent in the amount of \$1,780.72 is due to the Landlord on the first day of each month. The Tenants paid a security deposit and pet damage deposit, each in the amount of \$860.00 which the Landlord continues to hold.

The Landlord's Agent stated that the Tenants have been repeatedly late paying rent in in July 2022, October 2022, and January 2023. The Landlord provided a copy of the 10 Day Notices served to the Tenants in the late payment months. The Landlord's Agent stated that the Landlord subsequently served the Tenant with a One Month Notice by registered mail on January 8, 2023. The Landlord provided a copy of the Registered Mail receipt as well as a proof of service in support. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

The Tenant stated that they did not receive the One Month Notice. The Tenant stated that it is not unlikely that they have paid rent late in the above-mentioned months.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

The Landlord served the Tenant the One Month Notice by registered mail on January 8, 2023. The Tenant stated that they did not receive the One Month Notice. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the One Month Notice on January 13, 2023, the fifth day after the registered mailing.

Section 47(4) of the *Act* states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the *Act* states that if a Tenant who has received a Notice 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.

As I have found that the Notice was deemed served on the Tenants on January 13, 2023 and that there is no evidence before me that the Tenants applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenants are conclusively presumed to have accepted the end of her tenancy. I further find that the Landlord has sufficient cause to end the tenancy for repeated late payments of rent.

I find that the Landlord is entitled to an Order of Possession effective on March 31, 2023 at 1:00PM. The Order of Possession must be served on the Tenants by the Landlord. If the Tenants do not vacate the rental unit within on or before March 31, 2023 at 1:00PM, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with their Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenants' security deposit.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the *Act*, I grant the Landlord an Order of Possession to be effective at 1:00PM on March 31, 2023 after notice is served on the Tenants. 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
Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 16, 2023