Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPC, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act ("Act") for orders as follows:

- An order of possession pursuant to section 47
- reimbursement of the filing fee pursuant to section 72

The landlord BC appeared with witness MM. the tenant did not appear. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord advised that the tenant was served with the One Month Notice by registered mail February 6, 2023. The landlord provided Canada Post tracking numbers in evidence. I find that the tenant was served with the One Month Notice February 11, 2023 pursuant to sections 88 and 90 of the Act.

The landlord further testified through his agent that the tenant was served with the dispute notice February 24, 2023 by registered mail. The landlord provided a Canada Post tracking number in evidence date stamped February 24, 2023. I find that the tenant was served on February 29, 2023 pursuant to sections 89 and 90 of the Act.

The landlord testified that the tenant was served with evidence packages on February 25, 2023 and March 3, 2023. Both packages were posted to the door of the rental unit.

I find the tenant was served with these packages on February 28, 2022 and March 6, 2023 pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced October 4, 2016 on a month to month basis. Rent is $900.00 per month due on the first day of the month. The landlord holds a security deposit of $900.00 in trust for the tenant. The tenant still occupies the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 47(5) of the Act states that a tenant who has received a One Month Notice and does not file a dispute application within 10 days of receiving of the notice, is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. I have no evidence before me that the tenant filed an application for dispute resolution.

In this case the effective date of the One Month Notice is March 31, 2023. The tenant has until March 31, 2023 to vacate the rental unit. The landlord’s application for an order of possession is granted with an effective date of March 31, 2023 at 1:00pm.

The landlord was successful in his application. However, I decline to award the landlord the filing fee for this application. While it is appropriate for the landlord to apply for an order of possession prior to the effective date of the One Month Notice, the tenant could still move out on her own volition on March 31, 2023, without the need for the order of possession.

Conclusion

The landlord is granted an order of possession which will be effective March 31, 2023 at 1:00pm. The order of possession must be served on the tenant. The order of possession may be filed in 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: March 21, 2023

Residential Tenancy Branch