



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC

Introduction

The Landlord seeks an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “Act”) after issuing a One-Month Notice to End Tenancy signed on December 16, 2022 (the “One-Month Notice”).

D.V. appeared as the Landlord’s agent. The Tenant did not attend the hearing.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advises that the Landlord served the Notice of Dispute Resolution and initial evidence via registered mail sent on February 12, 2023. I am provided with a registered mail receipt dated February 12, 2023 as proof of service. I find that the Landlord’s Notice of Dispute Resolution and initial evidence were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem the Tenant received these documents on February 17, 2023.

Preliminary Issue – Landlord’s Additional Evidence.

The Landlord’s agent advises that additional evidence was served on the Tenant via registered mail sent on May 19, 2023.

Rule 3.14 requires applicants, in this case the Landlord, to serve their evidence on respondents and that this additional evidence must be received at least 14 days prior to the hearing.

In this case, the Landlord's additional evidence package, identified by the Landlord's agent as a 10-page document, was not served in accordance with this deadline. Though sent 14 days prior to the hearing, the Tenant is not present to confirm when it was received such that application of s. 90 of the *Act* would result in deemed receipt on May 24, 2023, which beyond the 14-day deadline.

As the additional evidence was not served in compliance with the Rules, I find that it would be procedurally unfair to include and consider it. As such, it is excluded and shall not be considered by me.

Issue to be Decided

- 1) Is the Landlord entitled to an order of possession?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

Tenancy and the One-Month Notice

The Landlord's agent confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on August 17, 2022.
- Rent of \$975.00 is due on the first of each month.
- A security deposit of \$487.50 was paid by the Tenant.

I am provided with a copy of the tenancy agreement.

The Landlord's agent advises that the One-Month Notice was posted to the Tenant's door on December 16, 2022. I am provided with a proof of service form by the Landlord confirming service. I accept the Landlord's evidence and find that the One-Month Notice was served in accordance with s. 88 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the One-Month Notice on December 19, 2022.

As required by s. 47(3) of the *Act*, all notices issued under s. 47 to end a tenancy for cause must comply with the form and content requirements set by s. 52 of the *Act*. I

have reviewed the One-Month Notice provided to me and find that it complies with the formal requirements of s. 52 of the *Act*. It is signed and dated by the Landlord, states the address for the rental unit, states the correct effective date, and sets out the grounds for ending the tenancy.

The Landlord uses an older version of the approved form, which is form RTB-33. However, I find that this issue is not material as the two forms are nearly identical when it comes to content, though the newer form has updated formatting. I find that the One-Month Notice meets the requirement that the notice be in the approved form.

Is the Landlord Entitled to an Order of Possession

A landlord may request an order of possession under s. 55(2)(b) of the *Act* where they have served a notice to end tenancy and the tenant has not disputed the notice within the proscribed time limit.

Pursuant to s. 47(4) of the *Act*, the Tenant had 10 days after receiving the One-Month Notice to file an application disputing the notice. In this case, the Landlord's agent advises, and I accept, that the Tenant did not file an application disputing the One-Month Notice.

I find that s. 47(5) of the *Act* has been triggered such that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have moved out by the effective date of the notice, which was on January 31, 2023.

I find that the Landlord is entitled to an order of possession under s. 55 of the *Act*, which will be effective two days after the Tenant receives it.

Conclusion

I grant the Landlord an order of possession under s. 55 of the *Act*. I order that the Tenant provide vacant possession of the rental unit to the Landlord within **two (2) days** of receiving the order of possession.

It is the Landlord's obligation to serve the order of possession on the Tenant. The Landlord may enforce the order of possession by filing it with the BC Supreme Court.

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: June 05, 2023

Residential Tenancy Branch