



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a one month notice to end tenancy for cause dated December 21, 2022 (the "One Month Notice") pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's agent HL attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:10 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that HL and I were the only ones who had called into the hearing.

I informed HL that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

HL confirmed the notice of dispute resolution proceeding package and the Landlord's documentary evidence (collectively, the "NDRP Package") were sent to the Tenant via registered mail on February 15, 2023. The Landlord submitted a receipt and tracking number in support (first of two tracking numbers referenced on the cover page of this

decision). Tracking records indicate that the package was available for pickup on February 17, 2023, but was eventually returned as unclaimed on March 6, 2023.

According to Residential Tenancy Policy Guideline 12. Service Provision, when a document served by Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on HL's testimony and the Landlord's evidence, I find the Tenant was served with the NDRP Package in accordance with sections 88(c) and 89(2)(b) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the NDRP Package on February 20, 2023, the fifth day after mailing.

Having found the Tenant to be deemed served with notice of this hearing, I directed this hearing to proceed in the Tenant's absence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

This tenancy commenced on April 15, 2021 for a fixed term until April 30, 2022, and continued thereafter on a month-to-month basis. Rent was \$2,487.00 due on the first day of each month. The Tenant paid a security deposit of \$1,225.00.

A copy of the One Month Notice has been submitted into evidence. The One Month Notice is signed by the Landlord and had an effective date of January 31, 2023. The stated reasons for ending the tenancy were:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent

The One Month Notice provides the following additional details of cause:

The tenant sublet the rental unit to someone unknown without the landlord's consent.

The tenant repeatedly pay rent late.

The landlord received the strata warning letter or penalty often.

HL explained that a copy of the One Month Notice was sent to the Tenant via registered mail on December 22, 2022. The Landlord submitted a receipt and registered mail tracking number in support (second of two tracking numbers referenced on the cover page of this decision). Tracking records indicate that this package was returned as unclaimed on January 15, 2023.

HL confirmed the causes described in the One Month Notice. HL stated that the rental unit is still currently occupied.

Analysis

1. Is the Landlord entitled to an Order of Possession?

Section 47 of the Act permits a landlord to end a tenancy for cause by issuing a one month notice to the tenant. Section 47(1) provides a list of grounds which may constitute cause under this section.

Section 52 of the Act states that in order to be effective, a notice to end tenancy given by a landlord must:

- be in writing
- be signed and dated by the landlord giving the notice
- give the address of the rental unit
- state the effective date of the notice
- state the grounds for ending the tenancy, and
- be in the approved (Residential Tenancy Branch) form.

I have reviewed the One Month Notice and find that it complies with the requirements of section 52 in form and content.

I find the Tenant was served with a copy of the One Month Notice by registered mail sent on December 22, 2022, in accordance with section 88(c) of the Act. I find that pursuant to section 90(a) of the Act, the Tenant is deemed to have received the One Month Notice on December 27, 2022, the fifth day after mailing.

Section 47(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days after receiving such notice. Therefore, the Tenant had until January 6, 2023 to dispute the One Month Notice. In this case, the Tenant did not apply to dispute the One Month Notice by January 6, 2023 or at all.

Section 47(5) of the Act states that if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with section 47(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.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) 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; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the One Month Notice was deemed served on December 27, 2022, the time for disputing the One Month Notice expired on January 6, 2023, and the Tenant did not make an application for dispute resolution. I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, or January 31, 2023. I conclude that the Landlord is entitled to an Order of Possession pursuant to sections 55(2)(b) and 55(4)(a) of the Act.

As the effective date stated on the One Month Notice has already passed, I grant an Order of Possession to the Landlord effective two (2) days after service of the Order upon the Tenant.

2. Is the Landlord entitled to recover the filing fee?

The Landlord has been successful in this application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to deduct \$100.00 from the \$1,225.00 security deposit held by the Landlord in full satisfaction of the amount awarded in this application.

Conclusion

The Landlord's claims for an order of possession of the rental unit and to recover the filing fee are granted.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two (2) days** after service upon the Tenant. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The Landlord is authorized to deduct **\$100.00** from the Tenant's security deposit on account of the filing fee awarded in this application.

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 08, 2023

Residential Tenancy Branch