



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant did not attend this hearing. The landlord's agent attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The hearing lasted approximately 28 minutes from 11:00 a.m. to 11:28 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the online teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent confirmed the names and spelling for him, the landlord, and the tenant. He stated that the landlord named in this application owns the rental unit. He said that he had permission to represent the landlord. He provided the landlord's email address for me to send this decision to the landlord after this hearing. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests.

The landlord's agent stated that he served the tenant with the landlord's application for dispute resolution hearing package on February 23, 2023, by way of registered mail. The landlord provided a Canada Post receipt with this application. The landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 28, 2022, five days after its registered mailing.

The landlord's agent said that the landlord's application was posted to the tenant's rental unit door, but he was not sure about the date, although he thought it might be on February 24, 2023.

The tenant did not submit any documentary or digital evidence for this hearing.

The landlord testified that the tenant was served with the landlord's One Month Notice to End Tenancy for Cause, dated January 27, 2023, and effective February 28, 2023 ("1 Month Notice") on January 27, 2023, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 1 Month Notice on January 30, 2023, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on May 1, 2022. Monthly rent in the amount of \$800.00 is payable on the first day of each

month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to occupy the rental unit.

A copy of the 1 Month Notice was provided for this hearing. The landlord confirmed that the 1 Month Notice was issued to the tenant for the following three reasons:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
 - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
 - *put the landlord's property at significant risk.*

The landlord's agent stated the following facts. The landlord seeks an order of possession against the tenant and to recover the \$100.00 filing fee paid for this application. The tenant was late paying rent to the landlord, three times during this tenancy on November 7, 2022, December 10, 2022, and January 4, 2023. This is indicated on the details of cause on page 2 of the 1 Month Notice. The landlord provided receipts for the late rent payments for December 2022 and January 2023. The landlord provided an e-transfer acknowledgement email for the late rent payment for November 2022. The tenant paid rent of \$800.00 per month from February to May 2023, and the landlord issued receipts for "use and occupancy only" to the tenant for those months. The landlord did not reinstate this tenancy by accepting rent from the tenant. The landlord did not tell the tenant that this tenancy would continue or that the 1 Month Notice was cancelled.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I accept the undisputed, affirmed testimony of the landlord's agent at this hearing. I accept the undisputed documentary evidence submitted by the landlord for this hearing.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. In this case, the landlord indicated that the rent is due on the first day of each month. The landlord provided a written tenancy agreement indicating that rent is due on the first day of each month.

Residential Tenancy Policy Guideline 38 states that “three late payments are the minimum number sufficient to justify a notice...” The landlord provided undisputed evidence that the tenant was late paying rent three times during this tenancy in November 2022, December 2022, and January 2023. The landlord provided rent receipts to show the late rent payments.

Accordingly, I find that the tenant was repeatedly late paying rent. I find that the landlord’s 1 Month Notice was issued for a valid reason. As I have found one of the three reasons to be valid, I do not need to examine the other two reasons on the 1 Month Notice.

The tenant has not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenant to file an application within ten days led to the end of this tenancy on February 28, 2023, the effective date on the 1 Month Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 28, 2023. As this has not occurred and the effective date has long passed, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. The tenant has not paid rent for June 2023, so he is not entitled to possession of the rental unit until the end of the month. I find that the landlord’s 1 Month Notice complies with section 52 of the *Act*.

I find that the landlord did not waive her right to enforce the 1 Month Notice by accepting rent from the tenant after the effective date of the notice of February 28, 2023. The landlord did not withdraw the 1 Month Notice and she continued to pursue an order of possession against the tenant at this hearing. I accept the undisputed affirmed testimony of the landlord’s agent that the landlord issued rent receipts to the tenant, indicating “use and occupancy only” from March to May 2023.

As the landlord was successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant’s security deposit of \$400.00. Over the period of this tenancy, no interest is payable on the deposit. The landlord did not apply to retain the tenant’s security deposit in this application. However, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 from the tenant’s security deposit of \$400.00 in full satisfaction of the monetary award for the filing fee. The remainder of the tenant’s security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Conclusion

The landlord's entire application is granted.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenant's security deposit of \$400.00 in full satisfaction of the monetary award for the filing fee.

The remainder of the tenant's security deposit of \$300.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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 12, 2023

Residential Tenancy Branch