

## **DECISION**

### **Introduction**

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This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant under section 72 of the Act

### **Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence**

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The hearing was scheduled for 11:00 AM on August 21, 2023 as a teleconference hearing. The Landlord and the Landlord's Translator T.T. attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Landlord, the Landlord's Translator, and I were the only persons who had called into this teleconference.

At the start of the hearing, the Landlord stated that they served their Application and evidence to the Tenant by Canada Post Registered Mail on May 5, 2023. The Landlord provided a copy of the Registered Mail receipt in support. Pursuant to Section 89 and 90, I find that the Tenant is deemed to have been served with the above mentioned documents five days later, on May 10, 2023.

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### **Issue(s) to be Decided**

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Is the landlord entitled to an Order of Possession based on the One Month Notice?

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

### **Background and Evidence**

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I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Landlord stated that; the tenancy began on October 25, 2019. The Tenant is required to pay rent in the amount of \$1,700.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$850.00 which the Landlord continues to hold. The Landlord stated that the tenant continues to occupy the rental unit.

The Landlord stated that the Tenant has changed the lock to the rental unit and is refusing to provide the Landlord with a key. The Landlord stated that the Tenant did not get permission from the Landlord to do so. The Landlord stated that the Tenant has damaged the door handle in the process of changing the lock.

The Landlord also stated that the Tenant has been improperly disposing their garbage, which has resulted in the landlord having to pick up the Tenant's garbage which is scattered around the rental property. The Landlord stated that the Tenant has disregarded the multiple warnings and has not provided the Landlord with a key to the rental unit and the Tenant continues to throw their garbage around the rental property.

For the above-mentioned reasons, the Landlord stated she served the Tenant in person with the One Month Notice on April 26, 2023 with an effective vacancy date of May 16, 2023. The Landlord's reasons for ending the tenancy on the One Month Notice are;

*"The Tenant has seriously jeopardized the health or safety or lawful right of the Landlord"*

The Landlord stated that the Tenant has not complied with the Notice to End Tenancy and continues to occupy the rental unit. The Landlord is seeking an order of possession in relation to the One Month Notice and for the return of the filing fee.

## **Analysis**

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### **Is the landlord entitled to an Order of Possession based on the One Month Notice?**

Section 47 of the Act states that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so under the Act.

Section 47(4) and (5) of the Act states that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

Based on the evidence before me, the testimony of the Landlord and on a balance of probabilities, I find the tenant did not make an application under section 47(4) of the Act

within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the Act, due to the failure of the tenant to take this action within 10 days, I find the tenant is conclusively presumed to have accepted that the tenancy ended on May 31, 2023, the corrected effective date on the One Month Notice. I further find that the Landlord provided sufficient evidence to indicate that they had sufficient cause to end the tenancy. In this case, the tenant and anyone on the premises were required to vacate the premises by **1:00PM August 31, 2023**.

Therefore, I find that the landlord is entitled to an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) under sections 47 and 55 of the Act.

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

As the landlord was successful in their application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application under section 72 of the Act. I order that the Landlord retain \$100.00 for the Tenant's security deposit.

## **Conclusion**

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I grant an Order of Possession to the landlord **effective at 1:00PM on August 31, 2023, after service of this Order on the tenant(s)**. Should the tenant(s) 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 that the Landlord retain \$100.00 from the Tenant's security deposit currently being held by the Landlord which represents the reimbursement of the filing fee paid by the Landlord to make the 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: August 21, 2023

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Residential Tenancy Branch