

## **DECISION**

### **Introduction**

This hearing dealt with the Tenant's November 1, 2023, Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord filed a cross-application on November 9, 2023, under the Act, requesting:

- an order of possession based on the One Month Notice issued October 12, 2023, under section 47 of the Act
- authorization to recover their filing fee under section 72 of the Act

### **Preliminary Matters**

Although the Tenant's own notice of today's hearing included the correct call-in number and participant code, the Tenant did not attend this hearing.

In addition, the Landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm service of their Proceeding Package to the Tenant on November 10, 2023, by registered mail in accordance with section 89 of the Act. The Tenant is deemed to have received the Proceeding Package on November 15, 2023, the fifth day after the registered mailing.

Under Rule of Procedure 7, I dismiss the Tenant's application in its entirety, without leave to reapply. I will conduct the hearing of the Landlord's application in the absence of the Tenant.

### **Issues to be Decided**

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?

## **Facts and Analysis**

Evidence was provided showing that this tenancy began on May 1, 2008, with a current monthly rent of \$403.00, due on first day of the month.

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

The Landlord issued a One Month Notice on October 12, 2023, requiring the Tenant to vacate the rental unit by November 30, 2023. The reason listed on the notice is the Tenant's failure to comply with minimum health and safety standards for the rental unit, which the Landlord believes to pose a significant safety risk, including risk of fire. I find this notice complies with section 52 of the Act.

I accept the Landlord's testimony and witnessed proof of service form indicating that they served the One Month Notice to the Tenant in person on October 12, 2023.

I find the Tenant's application to dispute the One Month Notice on November 1, 2023, was filed late, after the ten days allowed under section 47 of the Act.

The Landlord provided evidence that they have issued "use and occupancy" receipts for all payments received from the Tenant after the One Month Notice was issued.

Given the Tenant's late dispute of the One Month Notice and their failure to attend the hearing to present evidence to establish their reason for filing late, I find the Tenant is conclusively presumed under section 47 of the Act to have accepted the tenancy ended on November 30, 2023, the effective date of the One Month Notice. Therefore, I find the Landlord is entitled to an order of possession.

The Landlord says they have connected the Tenant to support to obtain other housing. The Landlord requests an order of possession dated May 31, 2024, to allow the Tenant adequate time to secure other housing.

I grant the Landlord an order of possession effective May 31, 2024, at 1:00pm.

### **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.

## **Conclusion**

I dismiss the Tenant's application in its entirety, without leave to reapply.

I grant an Order of Possession to the Landlord effective by 1:00 PM on May 31, 2024, after service of this Order 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 grant the Landlord a Monetary Order in the amount of \$100.00 for their filing fee under section 72 of the Act. The Landlord is provided with this Order on the above terms and 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 Small Claims Division of the Provincial Court and enforced as an Order of that 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 Act.

Dated: February 2, 2024

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Residential Tenancy Branch