



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

The Application for Dispute Resolution (the “Application”) was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Agent for the Landlord (the “Agent”) and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agent, a copy of the decision and any applicable Orders will be e-mailed to them at the address provided in the hearing. At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address.

Preliminary Matters

I identified that the Applicant is not the landlord listed on the Tenancy Agreement; however, the Applicant submitted a change of management notice in the documentary evidence before me. The change of management notice is dated September 2, 2015, and states that effective October 1, 2015, the property will be managed by the Applicant. Section 1 of the *Act* states that a landlord may be the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord, permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Based on the foregoing, I find that the Applicant meets the definition of a landlord under the *Act* and the Applicant will therefore be referred to as the “Landlord” in this decision.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the Tenancy began on October 1, 2014, and that rent is due on the first day of each month.

The Agent testified that the Tenant has a history of paying their rent late and that as a result, a One Month Notice to End Tenancy for Cause (the “One Month Notice”) was sent to the Tenant by registered mail on September 27, 2017.

The One Month Notice in the documentary evidence before me, dated September 27, 2017, has an effective vacancy date of October 31, 2017, and indicates that the reason for ending the tenancy is because the tenant is repeatedly late paying rent. The Agent provided a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the “Proof of Service”) and a copy of a registered mail receipt indicating that the One Month Notice was served in the manner described above. The Agent also provided confirmation from the mail delivery service provider that the package was delivered to and signed for by the Tenant on October 2, 2017. In the hearing the Tenant confirmed that they received the One Month Notice on October 2, 2017.

The Agent provided significant documentary evidence regarding the Tenant’s history of late rent payments and although the Tenant provided various reasons for paying the rent late, ultimately the Tenant confirmed that they paid the rent late on four occasions in 2017 and one occasion in 2018. The Tenant also testified that they did not dispute the One Month Notice.

Analysis

Section 47 of the *Act* outlines the grounds on which to issue a notice to end tenancy for cause. Specifically, section 47(1)(b) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Section 47(4) of the *Act* states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 47(5) of the *Act* also states that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the One Month Notice on October 2, 2017, the day they acknowledge receiving it by registered mail.

Section 47(2) of the *Act* states that a notice under this section must end the tenancy on a date that is not earlier than one month after the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. As the One Month Notice was not received by the Tenant until October 2, 2017, I find that the effective vacancy date listed on the One Month Notice, October 31, 2017, is incorrect. However, section 53 of the *Act* states that if a landlord or tenant gives notice to end a tenancy on a date that does not comply with the *Act*, the notice is deemed to be changed to the earliest date that complies with the notice period. Based on the above, I find that the incorrect effective vacancy date of October 31, 2017, is automatically corrected under section 53 of the *Act* to November 30, 2017.

I also find that the Tenant was obligated to pay the monthly rent, on time and in full each month. Section 55(2) of the *Act* states that a landlord may request an order of possession of a rental unit if 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.

As there is no evidence before me to the contrary, I find that the Tenant did not dispute the 10 Day Notice within the five (5) day period provided for under the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day

Notice, November 30, 2017, and the Landlord is therefore entitled to an Order of Possession.

Section 55(3) of the Act states that the director may grant an Order of Possession before or after the date when the tenant is required to vacate a rental unit and that the order takes effect on that date. As the effective date of the One Month notice has passed and the Tenant has paid rent for use and occupancy of the rental unit for January, 2018, the Order of Possession will be effective at 1:00 P.M. on January 31, 2018.

Section 72 of the Act states that the director may order payment or repayment of a fee under section 59 (2)(c) *[starting proceedings]* by one party to a dispute resolution proceeding to another party. It also states that in the case of payment from a tenant to a landlord, they may order the amount be deducted from any security deposit or pet damage deposit due to the tenant. Pursuant to section 72 of the Act, I also find that the Landlord is entitled to retain \$100.00 from the security deposit paid by the Tenant in recovery of the filing fee. The remainder of the Tenant's security deposit is to be dealt with in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on January 31, 2018, after service of this Order** on the Tenant. The Landlord is provided with this Order in 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 Supreme Court of British Columbia 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 *Residential Tenancy Act*.

Dated: January 22, 2018

Residential Tenancy Branch