



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Weidner Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the application for dispute resolution and evidence by posting on the rental unit door on September 2, 2020 in the presence of a witness. The landlord provided into evidence a signed witness statement attesting to service. Based on the evidence I find that the tenant is deemed served with the materials on September 5, 2020, three days after posting, in accordance with sections 88(g), 89(2)(d) and 90(c) of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began in February, 2020. Monthly rent is \$1,095.00 payable on the first of each month. A copy of the written tenancy agreement was submitted into evidence. The tenancy agreement provides that the tenant is responsible for registering the utilities for the rental unit themselves.

The landlord gave evidence that in violation of the tenancy agreement the tenant has failed to register the utilities for the rental unit or make payment for the utilities. The landlord submitted into documentary evidence a letter dated July 16, 2020, noting the violation of the term of the tenancy agreement, which the landlord characterized as a material term. In their warning letter the landlord providing the tenant until July 24, 2020 to correct this violation. The landlord testified that the tenant failed to correct this breach by the due date provided or at all.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 27, 2020. The reasons indicated on the notice for the tenancy to end is:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord served the 1 Month Notice by posting on the rental unit door on June 24, 2020. The landlord provided a signed Proof of Service form as evidence of service. The landlord said that they are not aware of the tenant filing an application to dispute the notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the evidence that the landlord posted the 1 Month Notice on the rental unit door on June 24, 2020. I find that the tenant is deemed served with the 1 Month Notice on June 27, 2020, three days after posting, in accordance with sections 88 and 90 of the *Act*. I find that the tenant has failed to file an application for dispute resolution within 10 days of June 27, 2020, the timeline granted under section 47(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, August 31, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

Residential Tenancy Policy Guideline 8 defines a material term as a term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I am satisfied with the evidence of the landlord that there has been a breach of a material term of the tenancy. I find that a requirement in a written tenancy agreement that the tenant register utility bills in their own name to be a material term. I accept the evidence of the landlord that a warning letter was issued alerting the tenant of the breach and providing a deadline to correct this matter. I accept the evidence of the landlord that the tenant failed to rectify the breach by the deadline provided or at all.

Therefore, in accordance section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession. As the effective date of the 1 Month Notice has passed I issue an order enforceable 2 days after service.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or any occupant 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.

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: October 15, 2020

Residential Tenancy Branch