



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, FFL

Introduction

On January 6, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 31-minute teleconference. All in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing and evidence package were served to the Tenant by registered mail on January 15, 2021 (the registered mail tracking number is noted on the first page of this Decision). As well, she indicated that when the registered mail package was returned to sender, she hand served the Tenant this package on or around February 5, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Landlord’s Notice, and the other claims were dismissed with leave to reapply. The Landlord is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on October 18, 2020, that rent was established at an amount of \$630.00 per month, and that it was due on the first day of each month. A security deposit of \$315.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the Notice was served to the Tenant by hand on November 11, 2020. The reasons the Landlord served the Notice are because the:

- Tenant or a person permitted on the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: damage the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, and jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The effective end date of the tenancy was noted on the Notice as December 31, 2020.

The Tenant did not make an Application to cancel the Notice.

The Landlord advised that the Tenant has called the police 21 times and the ambulance service 16 times unnecessarily. She stated that he has urinated and defecated on his mattress. As well, he has urinated on the bathroom floor, damaging the flooring. He has also smeared feces on walls and in the bathroom. In addition, the Tenant has smeared blood in the bathroom.

She submitted that the Tenant would be routinely drunk, would punch holes in the walls, and has even broken a door. The other tenants on the property have complained in writing to the Landlord about the Tenant's actions and behaviours. These complaints were submitted as documentary evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

With respect to the Notice served to the Tenant on November 11, 2020, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The Landlord's undisputed evidence is that the Notice was served on November 11, 2020 by hand. As per Section 90 of the *Act*, the Notice would have been deemed received immediately. According to Section 47(4) of the *Act*, the Tenant has 10 days to dispute this Notice, and Section 47(5) of the *Act* 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."*

After being served the Notice, the tenth day fell on Saturday November 21, 2020 and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by Monday November 23, 2020. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice and as there was no evidence provided corroborating that the Tenant had any extenuating circumstances that

prevented him from disputing the Notice, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

With respect to the reasons on the Notice, I am satisfied from the undisputed evidence of the Tenant's actions and behaviours that the Landlord has substantiated the reasons for serving the Notice. Based on the conclusive presumption and the undisputed evidence before me, I find that the Landlord is entitled to an Order of Possession. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlord to retain a portion of the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant 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: February 22, 2021

Residential Tenancy Branch