



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, FFL

Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “Act”) after issuing a One-Month Notice to End Tenancy signed July 28, 2021 (the “One-Month Notice”) and for return of their filing fee.

C.H. appeared as agent for the corporate Landlord. P.B. appeared on his own behalf as Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

C.H. advised that the Landlord served the One-Month Notice by posting it to the Tenant’s door on July 28, 2021. The Tenant acknowledges receipt of the One-Month Notice on July 28, 2021. I find that the Landlord served the One-Month Notice on the Tenant on July 28, 2021 in accordance with s. 88 of the *Act*.

C.H. further advised having served the Notice of Dispute Resolution and evidence for the Landlord by personally serving the application materials on the Tenant on October 13, 2021. The Tenant acknowledges receipt of the Landlord’s application materials. I find that the Landlord has served their application materials on October 13, 2021 in accordance with s. 89 of the *Act*.

The Tenant confirmed that he did not provide evidence as part of this hearing.

Preliminary Issue – Amending Style of Cause

At the outset of the hearing, P.B. confirmed the spelling of his last name, which is different than that set out by the Landlord in their application. I accept that the misspelling was an oversight by the Landlord and amend the style of cause pursuant to Rule 4.2 of the Rules of Procedure to reflect the correct spelling of the Tenant's surname.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed that the Tenant occupies his present rental unit pursuant to the terms of his employment as a caretaker for an adjacent carwash. The Tenant has been employed with the Landlord for approximately 10 years and has been residing within his current rental unit for approximately 4 years.

As part of the Tenant's employment, he does not pay rent. The parties confirmed that there is no security deposit. The Tenant indicated that he recently paid \$2,400.00 in rent over 3 to 4 months over the winter as he was not busy at the car wash. The rent payments appear to have been a one-off instance. For the remainder of the time the Tenant has occupied the rental unit, he has not paid rent.

No written tenancy agreement exists, and no written employment contract was placed into evidence. C.H. indicates that the previous property manager, V.P., was not good at keeping records.

The Landlord served the Tenant with the One-Month Notice on July 28, 2021. The Tenant acknowledges receipt of the One-Month Notice on July 28, 2021. The Tenant confirmed that he did not file to dispute the One-Month Notice.

The Tenant indicated that he was confused on who the Landlord was. The Tenant is of the impression that V.P. is the controlling interest behind the corporate Landlord and is the individual he has been in contact with for many years.

C.H. indicates that B.P., V.P.'s son, is the controlling shareholder and it is he who she has worked with when taking instructions from the Landlord. C.H. indicates that she has been acting as the property manager for the corporate Landlord pursuant to a management agreement signed on July 27, 2021.

After receiving the One-Month Notice, the Tenant spoke with V.P. about the notice based on his belief that V.P. was the controlling interest behind the Landlord. The Tenant acknowledges that V.P. told him the matter was "out of his hands" and that the Tenant would have to go through the process. C.H. indicated that she also spoke with V.P. about the tenancy and was told by V.P. that the matter was "out of his hands".

The Tenant took no steps to dispute the One-Month Notice on the basis of his personal relationship with V.P. and, in his evidence, V.P.'s assertions that the Tenant's work was satisfactory and that there were no issues. The Tenant further indicated that he did not file to dispute the One-Month Notice as he did not have the \$100.00 to file for the application. The Tenant admitted that he did not apply for a fee waiver.

The Landlord issued a second One-Month Notice to End Tenancy on October 13, 2021, which essentially replicated the first and was issued by the Landlord in an abundance of caution given the delay between the One-Month Notice and filing their application on October 5, 2021. The Tenant did not file to dispute the second Notice to End Tenancy.

C.H. indicates that the Tenant continues to work for the Landlord but has been given notice. As the Tenant continues to reside within the rental unit, which is immediately adjacent to the car wash, the Landlord has continued to allow the Tenant to work until the issue of the occupation of the rental unit is settled as part of this application. The Tenant denies being given notice ending his employment.

Analysis

The Landlord applies for an order of possession and for return of their filing fee.

A landlord may end a tenancy pursuant to s. 47 for cause and for the end a tenant's employment.

The One-Month Notice misspelt the Tenant's surname. I accept that this was an error on the part of C.H. caused by the lack of records kept by V.P. prior to her taking on the management of the rental unit for the Landlord. I exercise my discretion under s. 68(1) of the *Act* to correct the spelling of the Tenant's surname. I do so on the basis that the Tenant was aware that the One-Month Notice applied to him and it is reasonable to do so based on C.H.'s inability to know the correct spelling as there were no records kept by the Landlord by the previous property manager.

After this correction, I find that the One-Month Notice complies with the formal requirements of s. 52.

When a tenant receives a One-Month Notice to End Tenancy issued under s. 47 they must, within 10-days, dispute the notice with the Residential Tenancy Branch. Indeed, at the top of the Notice to End Tenancy it states the following:

You have the right to dispute this Notice **within 10 days** of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.

In this case, the Tenant failed to file a dispute at all. Given this, the conclusive presumption under s. 47(5) is engaged.

The Tenant did discuss why he failed to apply to cancel the One-Month Notice. These considerations may be relevant to a request for more time to file a dispute but do not displace the conclusive presumption. The Tenant did not ask for more time to file to dispute the One-Month Notice and, even had he done so at the hearing, I would not be permitted to consider such an application due to s. 66(3).

Accordingly, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and ought to have vacated the rental unit on the effective date. In this case, the effective date is August 31, 2021. As the Tenant continues to reside within the rental unit, the Landlord is entitled to an order of possession.

Conclusion

The Tenant is conclusively presumed to have accepted the end of the tenancy and has been overholding since August 31, 2021, which is the effective date set out in the One-Month Notice. I grant the Landlord an order of possession pursuant to s. 55 of the *Act*. The Tenant must provide vacant possession of the rental unit to the Landlord no later than **two (2) days** after being served with the order of possession.

As the Landlord was successful in their application, they are entitled to return of their filing fee. Pursuant to s. 72(1), the Tenant shall pay **\$100.00** to the Landlord for the Landlord's filing fee.

It is the Landlord's obligation to serve these orders on the Tenant.

If the Tenant does not comply with the monetary portion of this order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that Court.

If the Tenant does not comply with the order for possession, it may be filed by the Landlord with 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: November 30, 2021

Residential Tenancy Branch