



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPN, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- an order of possession under a One Month Notice to End Tenancy for Cause (the Notice), pursuant to sections 47 and 55;
- an order of possession under a tenant's notice to end a tenancy, pursuant to sections 45 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:42 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord RO (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represents landlord AT. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

The landlord affirmed that he served the notice of hearing and the evidence (the materials) in person to the tenant on March 09, 2022, at 12:00 P.M. at the rental unit.

Based on the landlord's convincing undisputed testimony, I find the landlord served the materials in accordance with section 89(1)(a) of the Act.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the landlord affirmed that he is not seeking an order of possession under a tenant's notice to end a tenancy, as the tenant did not serve a notice to end tenancy.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to withdraw the claim for an order of possession under a tenant's notice to end a tenancy.

Issues to be Decided

Are the landlords entitled to:

1. an order of possession under the Notice?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2020. Monthly rent is \$700.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$350.00 was collected and the landlord holds it in trust.

The landlord affirmed he served the Notice in person to the tenant on January 05, 2022, at 11:00 A.M. at the rental unit. The landlord affirmed the tenant did not dispute the Notice and continues to occupy the rental unit.

A copy of the Notice was provided. The Notice is dated January 05, 2022 and the effective date is February 28, 2022. The reasons to end the tenancy are:

- the tenant is repeatedly late paying rent.
- 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.
 - 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

The details of the events are:

Tenant has been warned many times, no noise after 11:00 P.M. Tenants in same building complaining continuously regarding noise. Received call January 03/2022 7:30 A.M. loud party from 12:00-7:30. Warning issued again January 04/2022. Received call January 05/2022 4:30A.M. – Loud party from 11:30P.M. until 6:00 A.M. Tenant refuses to abide by landlord rules.

Analysis

Based on the undisputed landlord's testimony, I find the landlord served the Notice in person on January 05, 2022, in accordance with section 88(a) of the Act.

Section 47(5) of the Act states:

- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

Section 47(5) of the Act is mandatory, and I do not have discretion as to its application. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental property.

I find the form and content of the Notice are valid pursuant to section 52 of the Act, as the Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for ending the tenancy and it is in the approved form.

As the tenant is occupying the rental unit and the effective date of the Notice is February 28, 2022, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55(2)(b) of the Act.

I warn the tenant that she may be liable for any costs the landlords incur to enforce the order of possession.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee.

Conclusion

I grant an order of possession to the landlords effective **two days after service of this order** on the tenant. 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.

Pursuant to section 72(2)(b), the landlords are authorized to deduct \$100.00 from the security deposit to recover the filing fee.

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: June 13, 2022

Residential Tenancy Branch