



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HILDON HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On May 5, 2022, 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”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 11:00 AM on September 6, 2022.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

M.H. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 11-minute teleconference. At the outset of the hearing, I informed M.H. that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on May 12, 2022 (the registered mail tracking number is noted on the first page of this Decision). However, he stated that he did not check to see if the Tenant was able to view the digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure. Based on this undisputed evidence, I am satisfied that the Tenant has been 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 documentary

evidence and will consider it when rendering this Decision. However, the landlord's digital evidence will be excluded and will not be considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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.

M.H. advised that the tenancy started on July 1, 2016, that rent was established in the amount of \$532.00 per month, and that it was due on the first day of each month. A security deposit of \$262.50 was also paid. A copy of the signed tenancy signed agreement was submitted as documentary evidence for consideration.

He then testified that the Notice was served to the Tenant by posting it to his door on February 28, 2022, and he referenced a proof of service form submitted as documentary evidence to corroborate this. The reason the Landlord served the Notice is because the "Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord." The effective end date of the tenancy was noted on the Notice as March 31, 2022. As well, he testified that the Tenant did not dispute the Notice.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

Based on the evidence before me, I am satisfied that the Notice was posted to the Tenant's door on February 28, 2022, and pursuant to Section 90 of the *Act*, this Notice was deemed received on March 3, 2022. According to Section 47(4) of the *Act*, the Tenant had 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 deemed to receive the Notice, the tenth day fell on Monday March 13, 2022, and the undisputed evidence is that the Tenant did not dispute this Notice at all. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 47(5) of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*. Consequently, 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 this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Section 72 of the *Act*, I allow the Landlord to retain this amount from 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: September 6, 2022

Residential Tenancy Branch