Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

A matter regarding 55 POWELL STREET HOLDINGS LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On October 31, 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*.

G.S. and D.H. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 16-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

G.S. advised that the Notice of Hearing package and some evidence was served to the Tenant by registered mail on November 16, 2022 (the registered mail tracking number is noted on the first page of this Decision). While she did not check the tracking history for this package, she testified that it was not returned to sender. Based on this undisputed testimony, 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 package and some evidence five days after it was mailed. As such, the evidence in this package will be accepted and considered when rendering this Decision.

She then advised that additional evidence was served to the Tenant by registered mail on February 24, 2023, and by attaching it to the Tenant's door on March 7, 2023. As this evidence was served late, and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this late evidence will be excluded and not 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 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.

G.S. advised that the tenancy started on February 1, 2021, that rent was established at an amount of $986.00 per month, and that it was due on the first day of each month. A security deposit of $475.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

She then testified that the Notice was served to the Tenant attaching it to the Tenant's door on July 13, 2022. The reason the Landlord served the Notice is because the "Tenant is repeatedly late paying rent." The effective end date of the tenancy was noted as August 31, 2022, on 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 a 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.

With respect to the Notice served to the Tenant on July 13, 2022, 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 undisputed evidence is that the Notice was served to the Tenant by being attached to his door on July 13, 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 have received the Notice on July 16, 2022, the tenth day fell on July 26, 2022, and the undisputed evidence is that the Tenant did not make an Application to dispute this Notice by that date. 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, 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. As such, based on Sections 55 (2)(b) and (4) of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of that claim.

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: March 10, 2023

Residential Tenancy Branch