



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPR, MNR, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlords' 1 Month Notice pursuant to section 47.

The tenants did not attend this hearing although the teleconference scheduled for 9:30 a.m. continued until 9:54 a.m. Both landlords (Landlord JC and Landlord TG) attended this hearing and were given an opportunity to make submissions with respect to both applications. Landlord JC provided evidence that a 1 Month Notice to End Tenancy for Cause was personally served to the tenants on January 21, 2015. The effective date provided on the 1 Month Notice, prepared accurately with a Residential Tenancy Branch issue form and citing that the tenants paid rent late, seriously jeopardized the health or safety of the landlord and/or put the landlord's property at risk as well as allegedly causing extraordinary damage was February 28, 2015. Landlord JC gave sworn testimony that she failed to serve the tenants with the landlords' Application for Dispute Resolution hearing package as required under section 89 of the *Act*. I accept that the tenants were duly served with the 1 Month Notice to End Tenancy.

The landlords withdrew their application for an Order of Possession based on the 10 Day Notice and a monetary order for unpaid rent as well as recovery of their filing fee.

Landlord JC testified that this tenancy began on February 1, 2014. She testified that the tenants originally paid \$1200.00 on the first of each month and that now, the rent had been increased to \$1225.00 payable on the first of each month. Landlord JC testified that the landlords continue to hold a security deposit in the amount of \$612.50 paid by the tenants at the start of this tenancy. She testified that the tenants have failed to pay any rent in February, March or April 2015.

Both landlords testified that they do not live in the same province as the residential premises rented to the tenants. They both testified that they have received complaints from neighbours about police attendance to the property, noise and disruption. Landlord TG testified that recently the landlords travelled to see the property themselves and speak to the tenants. She testified they were unable to speak to the tenants but that they were able to see excessive amounts of garbage on the property, rats on the property and damage to the exterior of the property.

Tenants' Application

Under Rule 10.1 of the Rules of Procedure,

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer 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.

Accordingly, the application by the tenants was dismissed without leave to re-apply.

Section 55 of the *Residential Tenancy Act* reads as follows;

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlords made an oral request to receive an Order of Possession if the tenants were unsuccessful in their application to cancel the 1 Month Notice. The tenants failed to attend this hearing with respect to their application to cancel the notice to end tenancy. Their application is dismissed without leave to re-apply. Given these circumstances and pursuant to section 55(1) of the *Act*, I find the landlords are entitled to a 2 Day Order of Possession.

Conclusion

The landlords' application is withdrawn.

The tenants' application to cancel the 1 Month Notice is dismissed without leave to reapply. In accordance with section 55(1) of the Act, I allow the landlords' oral request for an Order of Possession based on the dismissal of the tenants' application.

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the two days required, the landlords may enforce this Order in 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: April 13, 2015

Residential Tenancy Branch

