



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fosterterrace Apts
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MMDC, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order. I note that while the landlord's original Application sought an order of possession based on a 1 Month Notice to End Tenancy for Cause and the tenant's own notice to end tenancy, the landlord submitted an Amendment to an Application for Dispute Resolution to amend their Application as follows: order of possession based on a 1 Month Notice to End Tenancy for Cause only; a monetary order for unpaid rent or overholding; retain the security deposit; compensation for damage to the rental unit; and to recover the filing fee.

I accept all of the landlords' amendment with the exception of seeking compensation for damage to the rental unit. As the tenants are still in the rental unit they have until they vacate the rental unit to repair any damage that may exist. If the tenants fail to repair any damage before they vacate the unit, the landlords are at liberty to file a monetary claim against the tenants for compensation.

The hearing was conducted via teleconference and was attended by two of the named landlords and their legal counsel.

The landlords submitted documentary evidence to confirm that each of the tenants was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 8, 2018 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the documentary evidence of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent and/or overholding; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the

Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on October 1, 2013 for a 6 month and 1 day fixed term tenancy that converted to a month to month tenancy on April 2, 2014 for a current monthly rent of \$880.00 due on the 1st of each month;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 22, 2015 with an effective vacancy date of December 31, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; 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; and the tenant has caused extraordinary damage to the unit/site or property/park; and
- A copy of a Proof of Service – Notice to End Tenancy Document confirming the landlords served the 1 Month Notice to End Tenancy on November 22, 2015 at 9:05 a.m. by attaching a copy to the door of the rental unit. The Proof of Service was signed by the female landlord who attended the hearing and the service was witnessed by the male landlord who attended the hearing.

The landlords submit the tenants are still in the rental unit but have not paid any rent or overholding charges for the months of January and February 2016.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property; or the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

Based on the undisputed submissions and documentary evidence of the landlords I find the tenants were served with the 1 Month Notice to End Tenancy for Cause on November 22, 2015 as described by the landlords. I find the tenants are deemed to have received the Notice on November 25, 2015.

There is no evidence before me that the tenants have disputed the 1 Month Notice. As such, I find the tenants are conclusively presumed to have accepted the tenancy has ended and they must vacate the rental unit, pursuant to Section 47(5).

Also based on the landlord's undisputed testimony I find the tenants have paid no rent to the landlords for the periods of January or February 2016.

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,810.00** comprised of \$1,760.00 rent owed and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and interest held in the amount of \$435.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,375.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: February 17, 2016

Residential Tenancy Branch

