



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNR MNDC RR FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, received by the Residential Tenancy Branch on May 4, 2016 (the "Application").

Specifically, the Tenants seek the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"); a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss; an order permitting the Tenants to reduce rent for repairs, services or facilities; and an order granting the Tenants recovery of the filing fee.

The Tenants were represented at the hearing by G.G. The Landlord was represented at the hearing by her son, K.A. Both parties in attendance provided affirmed testimony. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The Landlord acknowledged receipt of the evidence upon which the Tenants intended to rely. The Landlord claimed evidence upon which he intended to rely was submitted to the Residential Tenancy Branch and was delivered to the Tenants. However, the Tenants claimed it was not received, and there was no record of the evidence in the Residential Tenancy Branch case management system. However, for the reasons that follow, I conclude the evidence is not necessary in coming to the conclusion I have, and that no party has suffered any prejudice as a result.

In addition, Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in these proceedings is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' Application for an order cancelling the 1 Month Notice and to recover the filing fee. The Tenants are granted leave to reapply for the remainder of their claims at a later date. I note that this does not extend any applicable timelines under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. Is the Landlord entitled to an order of possession?
3. Are the Tenants entitled to recover the filing fee paid to bring the Application?

Background and Evidence

The Tenants rent a basement suite in the Landlord's home. The parties agreed the tenancy began roughly 4 years ago. At the time of the hearing, rent was due in the amount of \$600.00 per month, payable on the first day of each month.

The parties agreed the 1 Month Notice was served on and received by the Tenants on March 6, 2016. K.A. advised it was issued due to differences and arguments that had arisen between the Tenants and his mother. Specifically, K.A. says the Tenants have yelled at and argued with the Landlord over plumbing issues in the rental unit.

On behalf of the Tenants, G.G. says the Tenants simply asked the Landlord to address plumbing issues. She says the Landlord responded by suggesting a plumber would not be called and suggesting the Tenants should leave if they are not happy there.

Analysis

Based on the above testimony of the parties and witnesses, and on the documentary evidence submitted, I find on a balance of probabilities that:

Section 47 of the *Act* describes the circumstances that permit a landlord to give notice to end a tenancy for cause. This provision requires a tenant in receipt of such notice to dispute it within 10 days after the date the notice is received. If a tenant fails to dispute the notice in this period, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice.

The Tenants confirmed they received the 1 Month Notice on March 6, 2016. However, the Tenants' Application was not received at the Residential Tenancy Branch until May 4, 2016, almost two months later.

Although the 1 Month Notice indicated the Tenants were to move out of the rental unit on the same date as the 1 Month Notice, I find the Tenants are conclusively presumed

to have accepted the tenancy ended on the effective date of the 1 Month Notice, which is corrected to April 30, 2016, pursuant to section 68 of the *Act*.

Section 55 of the *Act* requires me to grant an order of possession to a landlord when a tenant's application for dispute resolution is dismissed and the notice complies with section 52 of the *Act*.

As the Tenants' Application has been dismissed, and as I have found the 1 Month Notice complies with section 52 of the *Act*, I grant an order of possession to the Landlord. The order of possession will be effective two (2) days after service on the Tenants, and may be filed in and enforced as an Order of the Supreme Court of British Columbia.

As the Tenants have not been successful, I decline to grant the Tenants recovery of the filing fee.

Conclusion

The Tenant's Application to cancel the 1 Month Notice is dismissed.

Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two days after service on the Tenants. The order of possession may be filed in 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: June 06, 2016

Residential Tenancy Branch