



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession based on a 1 Month Notice to End Tenancy for Cause dated August 21, 2016 (the "1 Month Notice").

The landlord, the father of the landlord, a witness for the landlord, and the tenants attended the teleconference hearing. The parties were introduced and affirmed and the hearing process was explained to the parties. During the hearing the parties were given the opportunity to provide their evidence regarding the 1 Month Notice. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Is the landlord entitled to an order of possession for cause under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The first fixed term tenancy began on September 1, 2015 and ended on August 31, 2016. The second fixed term tenancy began on September 1, 2016 and is scheduled to end on August 31, 2017. Monthly rent of \$2,000.00 is due on the first day of each month. The tenants paid a security deposit of \$1,000.00 at the start of the tenancy which the landlord continues to hold.

The tenants confirmed being served with the 1 Month Notice dated August 21, 2016 on August 21, 2016. The tenants testified that they did not dispute the 1 Month Notice. Both tenants testified that they had called into the Residential Tenancy Branch and

were informed by Information Officers that they did not have to dispute the 1 Month Notice. There was one cause listed on the 1 Month Notice. The 1 Month Notice was signed and dated by the landlord and has an effective vacancy date of September 30, 2016. The tenants continue to occupy the rental unit. The landlord testified that the tenants paid for November 2016 as they have not vacated the rental unit; however, the landlord has not withdrawn the 1 Month Notice and continues to seek an order of possession.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

During the hearing, the tenants were advised that I was not a party to their conversation they claimed to have had with an Information Officer at the Residential Tenancy Branch. Furthermore, the parties were advised of section 47 of the *Act* that states:

47(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**
- (b) must vacate the rental unit by that date.**

[my emphasis added]

Based on the above, and taking into account that the tenants confirmed receiving the 1 Month Notice on August 21, 2016 and did not file an application to dispute the 1 Month Notice, and considering that the 1 Month Notice complies with section 52 of the *Act*, I find the tenants are conclusively presumed to have accepted that the tenancy ended on September 30, 2016. Accordingly, **I grant** the landlord an order of possession **effective November 30, 2016 at 1:00 p.m.** as the landlord has accepted money for November 2016 use and occupancy and made it clear to the undersigned that the tenancy was not reinstated and that an order of possession was being requested. Given the above, I find it was not necessary to consider the 1 Month Notice further.

The landlord is holding a security deposit of \$1,000.00 which was paid by the tenants at the start of the tenancy and has not accrued interest. As the landlord's claim had merit, I

grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. **I authorize** the landlord to retain \$100.00 from the tenants' security deposit, in full satisfaction of the recovery of the cost of the landlord's filing fee, leaving the tenants' security deposit balance in the amount of \$900.00.

The tenancy ended on **September 30, 2016** which was the effective vacancy date listed on the 1 Month Notice. The tenants have been over-holding the rental unit since that date.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective November 30, 2016 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized pursuant to section 72 of the *Act* to retain \$100.00 from the tenants' security deposit, in full satisfaction of the recovery of the cost of the landlord's filing fee. I find the tenants' security deposit balance is now \$900.00.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 4, 2016

Residential Tenancy Branch