



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was scheduled to consider the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") seeking:

- an Order of Possession for cause pursuant to section 55; and
- recovery of the filing fees for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. While both tenants attended, the tenant SW spoke on behalf of both (the "tenant").

The landlord testified that he served a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on the tenant on October 13, 2016 by posting it on the rental unit door. The landlord testified that he provided a second copy of the 1 Month Notice to the tenants on October 28, 2016 when the tenant requested a copy. The tenant testified that they had not received the 1 Month Notice that was posted on the door. The tenant confirmed that they received the 1 Month Notice on October 28, 2016. In accordance with section 88 of the *Act*, I find that the landlord duly served the tenant with the 1 Month Notice.

The landlord testified that he personally served the landlord's application for dispute resolution dated December 14, 2016 on the tenants on that same date. The tenant confirmed receipt of the landlord's dispute resolution package. In accordance with section 89 of the *Act*, I find that the landlord duly served the tenant with the landlord's application.

The landlord submitted five pages of written evidence to the Branch on January 16, 2017. However, as the landlord testified that he has not provided a copy of the written evidence to the tenants I will exclude it from this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?
Is the landlord entitled to recovery of the filing fees from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the claim and my findings are set out below.

The parties agreed on the following facts. This month to month tenancy began in June, 2016. The monthly rent is \$950.00 payable on the first of each month. A security deposit of \$475.00 was paid by the tenants and still held by the landlord. The tenants continue to occupy the rental unit.

The tenant testified that they did not file an application for dispute resolution in response to the 1 Month Notice due to busy personal circumstances. The tenant testified that since originally receiving the 1 Month Notice they have lost their copy along with all documents they had gathered for this hearing as they stored the documents in their mailbox. The tenant testified that she recalls the landlord had only checked off two of the reasons for ending the tenancy on the 1 Month Notice. The tenant said that the landlord has failed to sufficiently explain the reasons the landlord was seeking to end tenancy. The tenant said that she believes the primary issues for ending tenancy are noise complaints and possible illegal activity both of which she is able to refute and explain.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, November 30, 2016.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice.

While the tenant argues that the version of the 1 Month Notice they received did not sufficiently indicate the reasons for ending the tenancy and that the landlord may have added the reasons after service I do not find the tenant's evidence in this regard to be persuasive. I find that the landlord sufficiently checked the boxes on the standard 1 Month Notice form indicating the reasons for ending the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenant's \$475.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$100.00 from the tenants' security deposit to recover the landlord's filing fee for this application. I order that the retained value of the security deposit is reduced from \$475.00 to \$375.00.

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: January 18, 2017

Residential Tenancy Branch