



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47, and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' Application. The landlords testified that they had served the tenants their evidence by way of registered mail, and tracking numbers were provided as proof of service. In accordance with sections 88 and 90 of the *Act*, I find the tenants deemed served with the landlord's evidence. The tenants did not submit any written evidence for this hearing.

The tenants confirmed that they were served with the 1 Month Notice on January 28, 2017, with an effective date of February 28, 2017. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 88 of the *Act*.

Issues

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in July 2015, with monthly rent currently set at \$750.00 per month, payable on the first of each month. The landlord lives on the main floor, while the tenants reside in the basement rental suite.

The landlord submitted the notice to end tenancy providing two grounds:

1. the tenant is repeatedly late paying rent.
2. 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 landlord testified that the tenants repeated disturbed the landlord and his family upstairs by staying up late, and creating a disturbance past 10 p.m. The landlord testified that the tenants would have visitors past 10 p.m., who created a disturbance. The landlord also submitted that the tenants were using electrical heaters, which significantly increased the electricity consumption.

The landlord also testified that the tenants were repeatedly late in paying rent, which was paid in cash. The landlord testified that he had never provided receipts, as the tenants had never requested one.

The tenant, HK, testified stating that the significant disturbance the landlord was referring to, was when she was pregnant and in significant labour pain. She did not dispute the fact that she had guests over, but she stated that they were there to visit her three month old daughter.

The tenant testified that she had paid the rent on time, but was never given receipts except for the month of March 2017.

The landlord indicated in the hearing that he was seeking an Order of Possession for March 31, 2017.

Analysis

Section 55(1) of the *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 to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the tenants were served with the Notice to End Tenancy, and I find that the 1 Month Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenants did not file for dispute resolution until February 9, 2017, twelve days after receiving the 1 Month Notice. I find that the tenants have failed to file their application for dispute resolution within the ten 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, February 28, 2017. In this case, this required the tenant and any occupant on the premises to vacate the premises by February 28, 2017. As this has not occurred, I find that the landlord is entitled to an Order of Possession for March 31, 2017 against the tenants, pursuant to section 55 of the *Act*.

As the tenants were not successful in their application, I am not allowing the tenants' application for recovery of the filing fee.

Conclusion

The tenants' application to cancel the landlord's 1 Month Notice **is dismissed**. I find that the landlord's 1 Month Notice is valid and effective as of February 28, 2017.

I grant an Order of Possession to the landlord effective at 1p.m., **March 31, 2017** on the tenants. Should the tenants and any occupant of this original rental agreement fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia

The tenants' application for recovery of the filing fee is dismissed.

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: March 20, 2017

Residential Tenancy Branch