



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, FF

Introduction

This hearing was convened to deal with cross-applications under the *Residential Tenancy Act* (the “Act”). The tenants applied for an order cancelling a 1 Month Notice to End Tenancy for Cause dated March 26, 2017 (the “1 Month Notice”). The landlords’ application, received by the Residential Tenancy Branch (“RTB”) on April 6, 2017, is for an order of possession based on the 1 Month Notice.

The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony and documentary evidence, and to make submissions.

As the tenants did not attend, service of the landlords’ application and the notice of hearing and associated evidence was considered. One of the landlords provided affirmed testimony that she sent these by Canada Post registered mail to the rental unit address. She also provided the tracking number for the delivery. I accept that the landlords served the tenants with their application and notice of hearing. I also note that the tenants’ own application, which the tenants did not attend, was scheduled for the same time.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 1 Month Notice?

Are the landlords entitled to an order of possession?

Are the landlords entitled to recover the filing fees for this application from the tenants?

Background and Evidence

A copy of the tenancy agreement was in evidence. This tenancy began on August 1, 2016 on a month to month basis. Rent of \$560.00 was due on the first of the month. A

security deposit of \$280.00 was paid at the start of the tenancy and remains in the landlords' possession.

One of the landlords testified that she served the tenants with the 1 Month Notice on March 26, 2017 by handing it personally to one of them. A Proof of Service document signed by a third party witness attesting to this was in evidence. The tenants applied to dispute the 1 Month Notice on April 3, 2017.

The landlords also advised that the tenants have paid \$560.00 for May, 2017, and that the landlords have accepted this "for use and occupancy only." The landlords have committed to refunding the tenants a portion of the monies that they have paid for May based on the number of days that the tenants occupy the rental unit during the month of May.

Analysis

Section 47 of the Act allows a landlord to end a month to month tenancy for cause by giving notice effective on a date not earlier than 1 month after the date the tenant receives the notice, and the day before the day in the month that rent is payable.

Section 47(4) allows a tenant to apply to dispute such a notice within 10 days of receipt. The tenants have applied to dispute the 1 Month Notice within the applicable timeframe. However, the tenants have not attended at the hearing of their application. They have thus offered no basis for cancelling the 1 Month Notice. Accordingly, the tenants' application to cancel the 1 Month Notices is dismissed without leave to reapply. The landlords' 1 Month Notice is upheld. This tenancy ended on April 30, 2017, the effective date of the 1 Month Notice.

Section 55 of the Act requires that I grant an order of possession where a tenant's application to cancel a notice to end tenancy is dismissed or the landlord's notice is upheld, provided the notice complies with s. 52. I find that the 1 Month Notice complies with s. 52. Accordingly, I grant the landlords an order of possession effective two (2) days from the date of service.

Conclusion

The tenants' application is dismissed. The landlords' application is allowed and the 1 Month Notice is upheld.

I grant an order of possession to the landlords effective two (2) days from the date of service. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlords have agreed to refund the tenants a portion of the monies paid for May on a pro-rated basis based on the number of days the tenants occupy the rental unit during May.

As the landlords' application is successful, I grant the landlords the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) and **I authorize the landlord to retain \$100.00 from the security deposit in full satisfaction of the \$100.00 filing fee.** The balance of the security deposit must be dealt with in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 05, 2017

Residential Tenancy Branch