



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JIN HUH DEVELOPMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38.

The corporate landlord was represented by its agent who confirmed he had full authority to represent the landlord, and legal counsel (the "landlord") who primarily spoke on behalf of the corporate landlord. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants did not attend this hearing, which lasted approximately 20 minutes. An individual who identified herself as the current occupant of the rental unit attended and was given an opportunity to be heard, present affirmed testimony, make submissions and call witnesses.

The landlord testified that a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), dated March 8, 2017 was served on the tenants by leaving a copy in the mail slot of the tenants' address, on that date. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 1 Month Notice on March 11, 2017, three days after leaving a copy in the mail slot.

The landlord testified that the landlord's application for dispute resolution dated April 19, 2017 was served on the tenants by registered mail sent to a forwarding address provided by the tenants on April 20, 2017. The landlord provided two Canada Post tracking numbers as evidence of service. I find that the tenants were served with the landlord's application and evidentiary materials, in accordance with sections 88 and 89 of the *Act*, on April 25, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?
Is the landlord entitled to retain all or a portion of the security deposit?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in June, 2014. The monthly rent at the end of the tenancy was \$1,221.00 payable on the first of each month. A security deposit of \$575.00 was paid by the tenants at the start of the tenancy and is still held by the landlord.

The tenants, without the prior knowledge or authorization of the landlord, signed a tenancy agreement with the current occupant, who moved into the rental unit in February, 2017. The tenants initially shared the rental unit with the new occupant. The occupant testified that she paid the tenants a security deposit and the monthly rent. The tenants subsequently abandoned the rental unit in March, 2017. The new occupant remains in the rental unit. The landlord said that the tenants violated the tenancy agreement by renting out the rental unit without the landlord's written consent.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The landlord seeks an Order of Possession against the tenants under the original tenancy agreement and any other occupants of the rental unit.

The definitions of a "tenancy" and a "tenancy agreement" are outlined in the following terms in section 1 of the *Act*:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

I find that the current occupant of the rental unit is not a tenant under the definition of section 1 of the *Act*. Residential Tenancy Branch Policy Guideline #13 establishes that an occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the occupant as a tenant. As I am not satisfied that the landlord agreed to include the occupant as a tenant in the rental unit, the *Act* does not apply to their relationship.

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 corrected effective date of the 1 Month Notice, April 30, 2017.

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, the effective date of the notice and 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.

The landlord testified that they continue to hold the tenants' security deposit of \$575.00. I accept the landlord's testimony that the tenants have abandoned the rental unit and they have provided written authorization that the landlord may retain the amount. Therefore, pursuant to section 38 of the *Act*, I allow the landlord to retain the tenants' security deposit. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants 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 grant an order that the landlords may retain the full amount of the security deposit for this tenancy.

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: May 24, 2017

Residential Tenancy Branch