



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on October 12, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice to End Tenancy for Cause; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord's Agent (the "Agent") attended the hearing on behalf of the landlord. Also, both tenants attended the hearing. Neither party raised any issues with respect to service of the application and the Notice of Hearing.

All parties were given a full opportunity to be heard, to present evidence and to make submissions. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenants left the hearing early and disconnected after announcing that they did not want to participate further. The hearing continued and the Agent continued with their submissions.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Agent testified that she served the tenants with a One Month Notice to End Tenancy for Cause (the Notice), by posting a copy to the door of the rental unit on August 3, 2017. Service of this document was witnessed by a third party, as per the Proof of Service document. The Agent listed the effective date of the Notice as September 30, 2017. The tenants acknowledged that they received the Notice but were not sure exactly what day they received it.

The Notice indicates that the reason for ending the tenancy is because the tenants breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

After reviewing the Notice, I am satisfied that it complies with section 52 of the *Act* [*form and content of notice to end tenancy*]. Section 47 of the *Act* permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 47(5) of the *Act*.

In this case, the Agent issued the Notice on the basis indicated above. Based on the Agent's testimony and the Proof of Service document submitted with the Agent's documentary evidence, I am satisfied that the Agent served the tenants with the Notice, by posting a copy to the door of the rental unit on August 3, 2017. Since the tenants could not state exactly what day they received the Notice, I turn to sections 88 and 90 of the *Act*, which specifies that documents served in this manner are deemed to be received 3 days later. I find the tenants received the Notice on August 6, 2017, and that the effective date of this Notice is September 30, 2017.

The tenants had 10 days, until August 16, 2017, to dispute the notice, but did not do so. Accordingly, pursuant to section 47(5) of the *Act*, I find the tenants are conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

The agent is entitled to an order of possession, which will be effective **two days after service** on the tenants. However, if the tenants have already paid rent for the month of October, the Landlord should prorate the rent for the month, and return the balance of the rent accordingly.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was successful in this hearing, I also order the tenants to repay the \$100.00 fee the landlord paid to make the application for dispute resolution. I find the landlord is entitled to a monetary order in the amount of \$100.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order in the amount of **\$100.00** for the cost of filing this application. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: October 12, 2017

Residential Tenancy Branch