



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC MNSD ERP 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;
- for authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

The Applicants (tenants) did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's Application and evidence. Accordingly, I find the landlord duly served with the tenants' Application and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord provided undisputed testimony that the tenants were personally served with the 1 Month Notice, with an effective date of July 31, 2017, on June 27, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 1 Month Notice on June 27, 2017.

Neither party submitted a copy of the 1 Month Notice for this hearing. In order to verify whether the 1 Month Notice complies with section 52 of the *Act*, I allowed the landlord to submit, by fax, a copy of the 1 Month Notice after the hearing. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party.

In this case, the tenants had applied to cancel the 1 Month Notice, and I find it reasonable that the tenants are in possession of this 1 Month Notice. I find that there is no undue prejudice by admitting the 1 Month Notice submitted by the landlord after the hearing, as the tenants would have had a chance to review this evidence, but did not attend the hearing to make any submissions for their application, nor to dispute any submissions of the landlord. Thus I exercise my discretion to admit the 1 Month Notice submitted by the landlord immediately after the hearing.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

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.

In the absence of any submissions from the tenants in this hearing, I order the tenants' entire application dismissed without liberty to reapply. I find that the 1 Month Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date

of July 31, 2017. I find that the landlord is entitled to a 2 day Order of Possession. I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants.**

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 6, 2017

Residential Tenancy Branch