



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC FF

Introduction

The tenants submitted an Application for Dispute Resolution (“application”) under the *Residential Tenancy Act* (“Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated January 5, 2018 (“1 Month Notice”) and to recover the cost of the filing fee.

The tenants and two landlords attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing. The parties were also provided the opportunity to ask questions about the hearing process after it was explained to them. I have described below only the relevant testimony and evidence presented.

The parties did not raise any service issues and confirmed during the hearing that they were sufficiently served and had the opportunity to review the documentary evidence served upon them and the application details.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 1 Month Notice be cancelled?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The parties agreed that a written tenancy agreement does not exist between the parties but that a verbal tenancy agreement began on July 1, 2016. The parties agreed that the agreement was not to smoke in the rental unit however the parties disputed whether pets were not allowed in the rental unit as part of the verbal agreement. The parties agreed that monthly rent is \$1,350.00 per month and is due on the first day of each month.

Tenant BT first testified that he received the 1 Month Notice dated January 5, 2018 on January 5, 2018 and later changed his testimony to January 6, 2018 and stated that he received it under his door the next day which was January 6, 2018. The female tenant stated that she did not receive the 1 Month Notice until a few days later when she returned home. The tenant did not apply to dispute the 1 Month Notice until January 18, 2018. The tenants did not submit an application for more time to make an application to dispute a notice to end tenancy. The parties agreed that the landlord served a one page document with the 1 Month Notice that indicated the details of the four causes listed on the 1 Month Notice. A copy of the one page document was submitted in evidence.

The parties also agreed that money has been paid by the tenants for use and occupancy of the rental unit for March 2018.

Analysis

Based on the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 47(4) of the *Act* states that the tenants may dispute a 1 Month Notice within 10 days after the date the tenant receives the 1 Month Notice. In the matter before me, the tenant firstly stated he was served on January 5, 2018 and later changed his testimony to January 6, 2018 which was confirmed under oath by the male tenant. The tenants did not dispute the 1 Month Notice until January 18, 2018.

I find the deadline under section 47 of the *Act* to dispute the notice would have been Friday, January 16, 2018. The tenants did not apply until January 18, 2018 and did not apply for an extension of time to dispute the 1 Month Notice. As a result, and in accordance with section 47(5) of the *Act*, I find that the tenants are conclusively presumed to have accepted that the tenancy ended on the effective vacancy date listed as February 28, 2018 on the 1 Month Notice. Therefore, **I dismiss** the tenants' application in full as the tenants did not apply to dispute the 1 Month Notice within the permitted 10 day timeline under the *Act* and conclusive presumption applies in this

matter under the *Act*. I do not find it necessary to consider the four causes listed in the 1 Month Notice as a result. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.

[My emphasis added]

Given the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, **I grant** the landlords an order of possession effective on **March 31, 2018 at 1:00 p.m.** I have used this time and date as the landlords confirmed that money for use and occupancy has been paid for March 2018.

I note that the male tenant attempted to change his testimony again after my decision had been provided verbally during the hearing in what I find was an attempt to avoid eviction. I do not afford any weight to the male tenant's attempt to change his testimony again as a result.

As the tenants' application was dismissed I do not grant the filing fee for the tenants.

I caution the landlord to comply with section 13 of the *Act* in the future which requires that tenancy agreements be in writing.

Conclusion

The tenant's application fails and is dismissed without leave to reapply.

I find the tenancy ended on February 28, 2018.

The landlords have been granted an order of possession effective March 31, 2018 at 1:00 p.m. This order must be served by the landlords on the tenants and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2018

Residential Tenancy Branch