



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's file: OPC FFL

Tenants' file: CNC OLC LRE LAT

Introduction

This hearing dealt with cross-applications ("applications") by both parties for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The landlord applied to obtain an Order of Possession based on a 1 Month Notice to End Tenancy for Cause dated January 26, 2018 ("1 Month Notice") and to recover the cost of the filing fee. The tenants applied to cancel the 1 Month Notice, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to suspend or set limits on the landlord's right to enter the rental unit, and for authorization to change locks to the rental unit.

The landlord, a student legal advocate for the landlord ("advocate") and tenant WK ("tenant") attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

The landlord testified that she was not served with the tenant's application. As the tenant confirmed that she did not serve the tenants' application on the landlord, the tenants' application was dismissed with leave to reapply due to a service issue.

The tenant confirmed that she was served with the landlord's application and the Notice of a Dispute Resolution. As a result, the hearing proceeded with consideration of the landlord's application only. The tenant confirmed that she was also representing tenant KS.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The parties agreed that a fixed term tenancy began on November 1, 2017 and was a two year lease. The parties agreed that the tenants paid a \$900.00 security deposit at the start of the tenancy, which the landlord continues to hold.

The landlord affirmed that she served the tenants with the 1 Month Notice by posting it to their door on January 26, 2018. The tenant testified that she could not recall the specific day the 1 Month Notice was found on her door. The parties agree that the 1 Month Notice has an effective vacancy date of February 28, 2018, which has passed. As the tenant confirmed that they did not serve their application, I find that that is the same as not disputing the 1 Month Notice as the tenant's application was dismissed with leave to reapply due to a service issue. The landlord is seeking an Order of Possession and the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

The parties agreed that the tenants have paid for use and occupancy for April 2018.

Analysis

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

Order of possession - I find that the tenants were deemed served with the 1 Month Notice on January 29, 2018, as section 90 of the *Act* states that documents posted to the door are deemed served three days after they are posted to the door and I accept the landlord's testimony that the 1 Month Notice was posted to the tenants' door on January 26, 2018. I find the tenants did not dispute the 1 Month Notice as they failed to serve their application as noted above. Pursuant to section 47 of the *Act*, I find the tenants are conclusively presumed to have accepted that the tenancy will end on the effective vacancy date of the 1 Month Notice which was February 28, 2018. Therefore, I find the tenancy ended on February 28, 2018.

The tenants continue to occupy the rental unit. Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession if the 1 Month Notice complies with section 52 of the *Act*. I have carefully reviewed the 1 Month Notice and find that it complies with section 52 of the *Act*. Therefore, I grant the landlord an order of possession **effective April 30, 2018 at 1:00 p.m.** as the parties confirmed that money has been paid by the tenants to the landlord for use and occupancy for April 2018.

Pursuant to section 72 of the *Act*, as the landlord's application was successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee. I **authorize** the landlord to retain \$100.00 from the tenants' security deposit of \$900.00 in full satisfaction of the recovery of the cost of the filing fee. As the amount of the tenants' security deposit was previously \$900.00, I find the new balance of the tenants' security deposit is \$800.00.

Conclusion

The tenant's application is dismissed with leave to reapply due to a service issue.

The landlord's application is fully successful.

The landlord is granted an order of possession effective April 30, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenants' security deposit balance is now \$800.00.

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: April 10, 2018

Residential Tenancy Branch