



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated May 15, 2018 ("1 Month Notice") and to recover the cost of the filing fee.

The landlord, an agent for the landlord ("agent") and tenant SL ("tenant") appeared at 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.

Neither party raised any concerns regarding the service of documentary evidence.

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

A copy of the tenancy agreement was not submitted in evidence. The parties agreed that a month to month tenancy began on May 1, 2012. Monthly rent in the amount of \$650.00 was originally due on the first day of each month and has increased over the course of the tenancy to the current monthly amount of \$700.00 per month. The tenants paid a security deposit of \$325.00 at the start of the tenancy which the landlord continues to hold.

The tenant confirmed receiving the 1 Month Notice on May 16, 2018. The tenant confirmed that the tenants did not file an application to dispute the 1 Month Notice as they female tenants last name was not included on the 1 Month Notice. The tenant later stated that the tenants also did not dispute the 1 Month Notice due to health issues and confirmed that they did not arrange for an agent to dispute the 1 Month Notice on their behalf.

The landlord confirmed that they have accepted money for “use and occupancy” for the rental unit for October 2018. A copy of the 1 Month Notice was submitted in evidence.

Analysis

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

Order of possession – The tenant testified that she received the 1 Month Notice on May 16, 2018 and did not dispute the 1 Month Notice by filing an application for dispute resolution. The tenant stated that she did not think the 1 Month Notice was valid as it was missing the surname of the female tenant. The first name and surname of the male tenant is listed on the 1 Month Notice. The effective vacancy date listed on the 1 Month Notice was June 30, 2018 which has passed.

The tenant also confirmed that she gave the landlord a written notice that the tenants would be vacating on July 31, 2018 but have not moved due to health issues. The landlord did not agree that they have reinstated the tenancy and are seeking an order of possession for October 31, 2018 as money has been paid by the tenants for use and occupancy for October 2018.

Section 68(1) of the *Act* applies and states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

[My emphasis added]

While I find the 1 Month Notice complies with section 52 of the *Act*, with the exception of the female tenant's surname missing, I amend the 1 Month Notice as I find the female tenant would know or ought to have known that she was the second tenant listed as her first name was listed on the 1 Month Notice and I find the missing surname is an inadvertent error which I find is reasonable to amend under sections 68(1)(a) and 68(1)(b) of the *Act*.

In addition, pursuant to section 47 of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which was June 30, 2018 by not filing an application to dispute the 1 Month Notice. Although the tenant stated that they did not dispute the notice also because they are not healthy, the tenants could have had an agent dispute the 1 Month Notice on their behalf which the tenants failed to do.

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, I have reviewed the amended 1 Month Notice and find that it complies with section 52 of the *Act*. I also find that it is not necessary to consider any of the grounds listed in the 1 Month Notice as the tenants did not dispute the 1 Month Notice.

The tenants continue to occupy the rental unit. Pursuant to section 55 of the *Act*, **I grant the landlord an order of possession effective October 31, 2018 at 1:00 p.m.** which

must be served on the tenants. The date of October 31, 2018 was used as the agent confirmed that money for use and occupancy was received for October 2018.

As the landlord's application was successful, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee. As the landlord continues to hold a security deposit of \$325.00 **I authorize** the landlord to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to section 67 and 72 of the *Act*. Based on the above, I find that the tenants' security deposit is now \$225.00 and continues to be held by the landlord.

Conclusion

The landlord's application is fully successful.

I find the tenancy ended on June 30, 2018 which was the effective date of the 1 Month Notice. The landlord is granted an order of possession effective October 31, 2018 at 1:00 p.m. This order must be served on the tenants 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 pursuant to section 67 and 72 of the *Act*. The tenants' security deposit is now \$225.00.

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: October 5, 2018

Residential Tenancy Branch