



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlords seek the following remedies under the Act:

1. an order of possession for a One Month Notice to End Tenancy for Cause under sections 47 and 55 of the Act; and,
2. a monetary order for recovery of the filing fee under section 72(1) of the Act.

A dispute resolution hearing was convened on October 29, 2018, and the landlord, his agent, and the two tenants attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Are the landlords entitled to an order of possession for a One Month Notice to End Tenancy for Cause?
2. Are the landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenants commenced a tenancy on March 1, 2017. Monthly rent was \$1,500.00, due on the first of the month. A written tenancy agreement, a copy of which was submitted into evidence, includes three tenants, only two of whom appear as respondents on this action. One of the tenants testified that the third tenant continues to reside in the rental unit, while the landlord testified that the third tenant is no longer living in the rental unit. As this is the landlords' application, I make no changes to the parties listed.

The landlords' agent testified that a One Month Notice to End Tenancy for Cause (the "Notice") was issued and served on the tenant ("M.O."), in-person, by the landlord, on August 8, 2018. A copy of the Notice, along with a copy of the Proof of Service, was submitted into evidence. The effective end of tenancy date as noted on the Notice was September 9, 2018.

The tenants provided testimony relating to the underlying causes for the Notice being issued, namely, smoking issues. They testified that they had not had proper notice of the landlords' intentions and the underlying issues, and that they were in Toronto attending an Elton John concert. However, tenant M.O. testified and confirmed that she did, in fact, receive the Notice from the landlord on August 8, 2018.

In rebuttal, the landlord testified that the smoking is a minor issue, and that the main concern is the tenants' marijuana grow-op.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Notice to end the tenancy was given by the landlord to the tenants on August 8, 2018. As stated on page 2 of the Notice, "INFORMATION FOR TENANTS [. . .] You have the right to dispute this Notice within 10 days after you receive it, by filing an

Application for Dispute Resolution with the Residential Tenancy Branch [. . .] If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page one of this Notice.”

There is no evidence before me to find that the tenants disputed the Notice within ten days of receiving the Notice, and as such I find that the tenants have conclusively presumed to accept the Notice that the tenancy would end on September 9, 2018.

Applying section 55 of the Act to the oral and documentary evidence presented before me, I find that the landlords have established on a balance of probabilities that they are entitled to an order of possession of the rental unit.

As the landlords were successful in their application I grant them a monetary order in the amount of \$100.00 for recovery of the filing fee.

Conclusion

I hereby grant the landlords an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlords a monetary order in the amount of \$100.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: October 29, 2018

Residential Tenancy Branch