



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's agent (the "landlord") testified that the tenants were personally served with separate notices of dispute resolution packages on August 11, 2018. Tenant L.P. (the "tenant") confirmed receipt of the dispute resolution packages on or around August 11, 2018. I find that the tenants were served with these packages on August 11, 2018, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on February 15, 2018 and is currently ongoing. Monthly rent in the amount of \$3,500.00 is payable on the first day of each month. A security deposit of \$1,750.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on June 13, 2018 tenant T.B. was personally served with a One Month Notice to End Tenancy for Cause with an effective date of July 31, 2018 (the "One Month Notice"). Tenant T.B. confirmed receipt of the One Month Notice but did not recall on what date.

The One Month Notice states the following reason for ending the tenancy:

- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants are storing a large variety of items on the subject rental property including numerous cars, recreational vehicles, a boat, a trailer, ladders and other items. Photographs of the items on the subject rental property were entered into evidence.

The landlord testified that the accumulation of items on the property breaches section three of the Tenancy Agreement which states that "no accumulation or storage of unsightly garbage is allowed on acreage."

The landlord testified that the owners of the property received a letter dated March 22, 2018 which states that "there are several wrecked/derelict vehicles and tires being stored on the property. This letter confirms that the subject rental property is Agriculture (A1) and is located within the City's Agricultural Land Reserve (ALR). The storage of wrecked/derelict vehicles and including but not limited to the unauthorized storage of tires is not permitted." The letter went on to request that the property be cleaned up by April 22, 2018. The letter dated March 22, 2018 was entered into evidence.

The landlord testified that a letter dated April 4, 2018 was sent to the tenants advising of the letter of complaint from the city and requesting the tenants clean the property. This letter was entered into evidence. The tenant confirmed receipt of the letter dated April 4, 2018.

The landlord submitted that on April 20, 2018 the owners of the subject rental property received an extension to May 22, 2018 from the city allowing more time for the property to be cleaned. The landlord submitted that this extension was communicated to the tenants.

The landlord submitted that on May 28, 2018 the owners of the subject rental property received a second extension until June 10, 2018 from the city allowing more time for the property to be cleaned. The landlord submitted that this extension was communicated to the tenants.

The landlord testified that while the tenants made efforts to remove items from the subject rental property, more items were continuously brought to the property and so the One Month Notice was served on the tenants on June 13, 2018.

The tenant testified that tenant T.B. is a widow and received a large amount of items from her deceased husband's estate and that she hired him to sort through all of the items to determine what items need to be kept, sold, recycled or thrown out. The tenant testified that he has taken steps to clean the property including getting rid of 7-8 vehicles which were on the property, but that he continually brings more items to the property to be sorted and dealt with.

The tenant testified that he has not spoken directly with a bylaw officer and would be willing to do whatever the bylaw officer recommended to bring the subject rental property in compliance with the city by-laws.

The tenant testified that he did not make an application with the Residential Tenancy Branch to dispute the One Month Notice.

Analysis

Based on the testimony of both parties and the evidence provided, I find that service of the One Month Notice was effected on the tenants on June 13, 2018, in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

In this case, the tenants did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47 of the *Act*, the tenants' failure to file to dispute the One Month Notice within 10 days of receiving the One Month Notice led to the end of this tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by July 31, 2018. As this has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$100.00.

The landlord is provided with this Order in the above terms and 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: September 27, 2018

Residential Tenancy Branch