



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDCL-S FFL

Introduction

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

- an Order of Possession for cause pursuant to section 55;
- a monetary award for damages and loss pursuant to section 67;
- authorization to retain the security deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 20 minutes. The landlord attended and was given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served a 1 Month Notice to End Tenancy for Cause dated September 3, 2018 (the "1 Month Notice") on the tenants by leaving a copy in their mailbox on that date. I find that the tenants are deemed served with the 1 Month Notice in accordance with sections 88 and 90 of the Act on September 6, 2018.

The landlord testified that they served each of the tenants with the notice of dispute application dated September 25, 2018 by registered mail sent on September 26, 2018. The landlord provided two Canada Post tracking numbers and receipts as evidence of service. Based on the undisputed evidence I find that the tenants are each deemed to have been served with the landlord's hearing package in accordance with sections 88, 89 and 90 of the Act on September 31, 2018, five days after mailing.

During the hearing the landlord withdrew the portions of their application dealing with a monetary award. The landlord said they are solely seeking an order of possession.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy began approximately 9 years ago. There is no written tenancy agreement. The current monthly rent is \$1,150.00. A security deposit of \$575.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord said that rent is due by the first weekend of the month. The landlord testified that the tenants have had issues with paying the full amount of the monthly rent by the due date. The landlord testified that the tenants failed to pay the full rent by the date it is due for the months of March, April, May, June and September, 2018. The landlord said that the tenants are consistently told that they must pay the full amount of rent on the first weekend.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, October 31, 2018.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy. I accept the undisputed evidence of the landlord that the terms of the oral tenancy agreement between the parties provides that full rent of \$1,150.00 is payable by the first weekend of each month. I accept the landlord's evidence that the tenants

have failed to pay the rent in full by the due date for more than 3 months during the past year. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. The landlord orally requested that an Order of Possession be effective December 1, 2018 at 1:00PM and I issue an order accordingly.

Conclusion

I grant an Order of Possession to the landlord effective **1:00PM on DECEMBER 1, 2018**. Should the tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The balance of the landlord's application has been withdrawn.

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: November 6, 2018

Residential Tenancy Branch