



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WIDSTEN PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") seeking remedy 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 September 5, 2018 ("1 Month Notice") and to recover the cost of the filing fee.

An agent for the corporate landlord ("agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants in two methods. The first method was by posting the Notice of Hearing, application and documentary evidence to the tenants' door on November 8, 2018. The second method was by registered mail. The agent testified that three registered mail packages were addressed to each tenant at the rental unit address and were mailed on November 8, 2018. Three registered mail tracking numbers were provided, which I have included on the cover page of this decision for ease of reference.

The agent testified that the tenants continue to occupy the rental unit as some of their items remain. Based on the above, and without any evidence before me to prove to the contrary, I accept that the tenants were served with the Notice of Hearing, application and documentary evidence. Section 90 of the *Act* states that documents posted to the door are deemed served three days after they are posted and that documents sent by registered mail are deemed served five days after they are mailed. Therefore, I find the tenants were deemed served on November 11, 2018 by posting to their door and

November 13, 2018 by registered mail. As the tenants did not attend this hearing, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The agent confirmed the landlord's email address at the outset of the hearing. The decision and any related orders will be emailed to the landlord and sent by regular mail to the tenants as an email address for the tenants was not available at the hearing.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- 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 submitted in evidence. The tenant began on October 1, 2016. The tenants paid a security deposit of \$425.00 at the start of the tenancy which has accrued \$0.00 in interest. The landlord continues to hold the security deposit.

The agent confirmed service of the 1 Month Notice by posting to the tenants' door on September 5, 2018. The 1 Month Notice included an effective vacancy date of October 31, 2018, and indicated one cause on page two of the 1 Month Notice. The agent affirmed that the tenants did not dispute the 1 Month Notice and failed to vacate the rental unit by October 31, 2018. The agent stated that the landlord is seeking an order of possession as the tenants continue to occupy the rental unit with their personal belongings.

Analysis

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

Order of possession – Section 47 of the *Act* states that if the tenants once served with the 1 Month Notice do not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenants are conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before

me, the tenants did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date which was October 31, 2018. As the tenants continue to occupy the rental unit, I find the tenants are overholding the rental unit. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

As the landlord's application was successful and pursuant to section 72 of the *Act*, I authorize the landlord to retain **\$100.00** from the tenants' \$425.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. I find the tenants' security deposit is now \$325.00 as a result, which the landlord continues to hold.

Conclusion

The landlord's application is successful.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on October 31, 2018 and that the tenants have been overholding the rental unit since that date.

The landlord has been authorized to retain \$100.00 from the tenants' \$425.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. The tenants' security deposit is now \$325.00 as a result.

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: December 14, 2018

Residential Tenancy Branch