



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* ("Act") for:

- an Order of Possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 11 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord provided a signed authorization with this application and confirmed verbally that he had permission to represent the landlord owner named in this application at this hearing.

The landlord confirmed that both tenants were served with a copy of the landlord's application for dispute resolution hearing package on January 14, 2019 by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on January 19, 2019, five days after their registered mailings.

The landlord confirmed that both tenants were served with a copy of the landlord's 1 Month Notice to End Tenancy for Cause, dated December 12, 2018 ("1 Month Notice") on the same date by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with this application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 1 Month Notice on December 17, 2018, five days after their registered mailings.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. The landlord owner of this rental unit passed away and left the unit to his wife and son; his wife is named in this application as the landlord. The tenancy began approximately two years ago. Monthly rent in the amount of \$900.00 is payable on the first day of each month. The landlord does not believe that a security deposit was paid for this tenancy. The tenants continue to reside in the rental unit. The rental unit is the basement of a house.

The landlord's 1 Month Notice indicates an effective move-out date of January 31, 2018. The landlord issued the notice for the following reason:

- *Rental unit/site must be vacated to comply with a government order.*

The landlord seeks an order of possession based on the 1 Month Notice. The landlord provided two City bylaw letters, both dated December 7, 2018, indicating that upon inspection, the rental property had a secondary suite which had to be owner-occupied as per City zoning bylaws.

The letters stated that the owner was operating an illegal dwelling at the rental property and that the owner had to remove all kitchen and electrical facilities. The letters indicated that the owner would be fined \$590.44 per year, which would be added to the owner's property taxes, and that the owner had to stop operating the illegal dwelling by January 15, 2019, which was determined to be a "rooming house with excess lodgers." The letters reference further inspections that would be performed to determine whether the owner was compliant or further fines would be issued.

The landlord testified that there were recent raids at the rental unit due to safety concerns and the bylaw officers notified him that they would be revoking the owner's business license for rental of the property and shutting the rental unit down because of the rooming house.

Analysis

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the rental unit must be vacated to comply with a government order from the City bylaw officers. The landlord provided two City bylaw letters referencing monetary penalty fines and further inspections if the owner does not have the rental unit vacated and shut down electrical and kitchen facilities.

I accept the landlord's undisputed evidence that the rental unit is an illegal dwelling and that the tenants are operating an illegal rooming house. I accept the landlord's undisputed evidence that after serving the 1 Month Notice to the tenants, that he spoke with City bylaw officers who will be issuing fines and revoking the owner's license for the rental, after raids have been conducted at the rental unit.

The tenants have not made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenants to take this action within ten days led to the end of this tenancy on January 31, 2019, the effective date on the 1 Month Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 31, 2019. As this has not occurred, I find that the landlord is entitled to an **order of possession effective two (2) days after service on the tenants**, pursuant to section 55 of the *Act*. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord **effective two (2) days after service on the tenants**. Should the tenants or anyone 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.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenants. 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: February 22, 2019

Residential Tenancy Branch