



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, MNDCT, AAT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the tenants seeking remedy under the *Residential Tenancy Act* (“Act”) to cancel a 1 Month Notice to End Tenancy for Cause dated November 19, 2018 (“1 Month Notice”), for a monetary claim of \$2,000.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for more time to make an application to cancel a notice to end tenancy, for an order directing the landlord to allow access to the unit, site or property for the tenants or the guests of the tenants, and to recover the cost of the filing fee.

The tenants were provided with a copy of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) after they filed their application on March 6, 2019. The Notice of Hearing is dated March 7, 2019 and confirmed the hearing date and time as Thursday, April 25, 2019 at 9:30 a.m. Pacific Time. The tenants; however, did not attend the hearing set for this date, Thursday, April 25, 2019 at 9:30 a.m. Pacific Time. The phone line remained open for ten minutes and was monitored throughout this time. The only parties to call into the hearing were the landlord and legal counsel for the landlord.

Preliminary and Procedural Matter

Legal counsel for the landlord confirmed their email addresses at the outset of the hearing. The tenants provided their email addresses in their application. The landlord and legal counsel were advised that the decision would be emailed to both parties and that the order of possession would be emailed to the landlord for service on the tenants.

Issues to be Decided

- Should the tenants’ application be dismissed without leave to reapply for failing to attend the hearing when the respondent is present and ready to proceed?
- If so, is the landlord entitled to an order of possession under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A copy of the 1 Month Notice was also submitted in evidence.

The landlord confirmed that the tenant was served with the 1 Month Notice dated November 19, 2018 on that date. The tenants did not file to dispute the 1 Month Notice until well after the effective date listed on the 1 Month Notice which is listed as December 15, 2018.

The landlord testified that rent was due on the first day of each month. The landlord filled out the 1 Month Notice in full and listed one cause on the 1 Month Notice and provided details of that cause; repeated late payment of rent.

The landlord testified that the tenants continue to occupy the rental unit and have not paid rent since being served with the 1 Month Notice.

The landlord is seeking an order of possession effective as soon as possible.

Analysis

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

Following the ten minute waiting period, the application of the tenants was dismissed without leave to reapply as the tenants failed to attend the hearing to present the merits of their application. I have also considered that the respondent and their legal counsel did attend the hearing and were ready to proceed.

The effective date on the 1 Month Notice automatically corrects under section 53 of the *Act* to December 31, 2018. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[Emphasis added]

Pursuant to section 55 of the *Act*, and taking into account that I find the 1 Month Notice complies with section 52 of the *Act* as it was fully completed by the landlord, I must grant the landlord an order of possession. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on December 31, 2018, as that is the corrected effective date of the 1 Month Notice.

Conclusion

The tenants' application is dismissed without leave to reapply, as the tenants failed to attend the hearing to present the merits of their application and the respondent did attend and was ready to proceed.

The tenancy ended on December 31, 2018.

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 filed in the Supreme Court of British Columbia and enforced as an order of that court.

I do not grant the filing fee as the tenants' application is dismissed without leave to reapply.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord for service on the tenants.

This decision is final and binding on the parties, except as 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: April 25, 2019

Residential Tenancy Branch