



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNL FFT
Landlord: OPC, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on March 19, 2019, (the “Landlords’ Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice for Cause dated October 30, 2018 (the “One Month Notice”); and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was also made on March 19, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a Two Month Notice to End Tenancy; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on May 10, 2019 as a teleconference hearing. The Landlords attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 27 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenant by registered mail on March 22, 2019. The Landlords provided the tracking information in support. Based on the oral and written submissions of the Landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the

Application and documentary evidence on March 27, 2019, the fifth day after the registered mailing.

The Landlords were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Rule 7.3 of the Rules of Procedure states that if a party does not attend the hearing, the hearing may proceed without that party or the application may be dismissed with or without leave to reapply. As the Tenant did not attend the hearing, I dismiss the Tenant's application without leave to reapply.

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Are the Landlords entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified that the tenancy began on June 1, 2018. Currently rent in the amount of \$1,260.00 is due to the Landlord each month. The Tenant paid a security deposit in the amount of \$630.00 which the Landlord continues to hold. The Landlord submitted a copy of the tenancy agreement in support.

The Landlords testified that the Tenant has had cats in her rental unit which is a breach of a material term of the tenancy agreement. Also, the Landlords testified that the Tenant has been making use of the basement suite attached to the rental unit, which is not included in the Tenant's rental agreement. The Landlords stated that they have cautioned the Tenant on numerous occasions about these issues; however, the Tenant has not yet complied with their requests.

The Landlords stated that they subsequently served the Tenant with a One Month Notice for Cause dated October 30, 2018 with an effective vacancy date of December 1, 2018 by posting it to the Tenant's door on October 31, 2018.

The Landlords testified that the parties took part in a dispute resolution hearing on December 21, 2018 at which time the Tenant's Application to cancel the One Month Notice dated October 30, 2018 was dismissed with leave to reapply. Therefore, when the tenant applied the second time she was out of time to dispute the notice and was conclusively presumed to have accepted the end of the tenancy under section 47(5) of the Act. The Landlords stated that they assumed that the Tenant would move out of the rental unit as a result; however, the Landlords stated that the Tenant continued to occupy the rental unit.

The Landlords testified that the Tenant had been paying rent up unit March 2019. The Landlords stated that they provided the Tenant with a receipt each month, confirming that rent had been paid; however, they marked the receipt with "use and occupancy only" as they did not want to give the impression that by accepted rent from the Tenant they were reinstating the tenancy. The Landlords stated that the Tenant has not paid rent for April and May of 2019. The Landlords are seeking an order of possession in relation to the One Month Notice. If successful, the Landlords are also seeking the return of the filing fee.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

The Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated on October 30, 2018 with an effective vacancy date of December 1, 2018, by posting it to the Tenant's door on October 31, 2018. Based on the oral and written submissions of the Landlords, and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the One Month Notice on November 3, 2018, the third day after the Landlords posted the One Month Notice. As such, I find that the effective date on the One Month Notice must be corrected to December 31, 2018.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice.

Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I find that the Tenant made an Application to cancel the One Month Notice on November 13, 2018. I further find that the Tenant's Application made on November 13, 2018 was dismissed

with leave to reapply on December 21, 2018. As the dismissal of the Tenant's Application on December 21, 2018 doesn't extend any statutory timelines outlined in the Act, I find that the Landlords are entitled to a two-day Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlords were successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenant's security deposit.

Conclusion

The Tenant Application to Cancel the One Month Notice was dismissed on December 21, 2018. As such she was out of time to dispute the notice when she filed the application that was before me in this matter. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: May 10, 2019

Residential Tenancy Branch