



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNC, LRE, MNDCT, MNRT, OLC, OT, RPP, FFT
OPC, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenants applied for an Order to allow an assignment or sublet, to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), to restrict or suspend the Landlord’s right to enter, for monetary compensation, for compensation for emergency repairs, for an Order for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement, for “other” issues not specified, and for the return of personal property. The Landlord applied for an Order of Possession based on a One Month Notice. Both parties also applied for the recovery of the filing fee paid for each Application for Dispute Resolution.

The Landlord and three agents (collectively the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Tenants during the approximately 19 minutes that the phone line remained open.

The Landlord stated that they received the Notice of Dispute Resolution Proceeding package from the Tenants on May 27, 2019 which they noted was past the time period in which the documents were to be served. The Landlord confirmed that the Notice of Dispute Resolution Proceeding package regarding their own application, along with a copy of their evidence was served to the Tenants in their mailbox on May 27, 2019. I find that the Tenants were duly served in accordance with Sections 88 and 89 of the *Act*. I also note that the Tenants would have been aware of the hearing date and time due to their own Application for Dispute Resolution.

Preliminary Matters

As stated by rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*, if a party does not attend the hearing, the hearing may continue in their absence or the application may be dismissed. As the Tenants did not attend the hearing and the Landlord attended the hearing ready to proceed, the Tenants' Application for Dispute Resolution is dismissed, without leave to reapply. The hearing continued regarding the Landlord's application for an Order of Possession.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy which was also confirmed by the tenancy agreement submitted into evidence. The tenancy began on December 1, 2017. While rent was initially set at \$1,750.00, the Landlord testified that rent is currently \$1,793.25, due on the first day of each month. A security deposit of \$875.00 was paid at the outset of the tenancy. The Landlord stated that a pet damage deposit of \$875.00 was also required but has not been paid by the Tenants.

The Landlord provided testimony that the One Month Notice was served to the Tenants in person on May 1, 2019. The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Put the landlord's property at significant risk
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Damage the landlord's property
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park

- Tenant has assigned or sublet the rental unit/site without landlord's written consent
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement

The effective end of tenancy date of the One Month Notice was stated as June 1, 2019.

The Landlord testified that the Tenants have repeatedly paid rent late and that multiple 10 Day Notices to End Tenancy for Unpaid Rent have been served to the Tenants when rent was not paid as due on the first day of each month. They stated that 10 Day Notices were served to the Tenants for September 2018, October 2018, November 2018, January 2019 and June 2019.

The Landlord also provided testimony regarding the additional reasons for the One Month Notice, including that the Tenants owe money for a utility bill, that they are breeding dogs on the property despite only being allowed one pet, and that the \$875.00 pet damage deposit was not paid as required. The Landlord also testified as to damage on the property including a broken window and broken patio door.

Regarding the unreasonable number of occupants, the Landlord stated that the Tenants have a number of people residing in the rental unit without permission. They also noted that the Tenants have threatened the Landlords when they have provided notice to enter the unit.

The Landlord stated their position that illegal drug activity is occurring in the home. They referenced an email submitted in their evidence. The email, dated May 30, 2019, is addressed to the Landlord from the police. In the email the officer notes that the police attended the rental unit on May 21, 2019 to assist the Landlords while an inspection was being conducted. They noted that a male who was wanted on several arrest warrants come out of the backyard and then entered the home. The email notes that the man was located in the basement of the residential property and was then arrested.

Analysis

As stated in Section 55(1) of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed, the Landlord must be granted an Order of Possession if the notice is found to be valid.

Upon review of the One Month Notice, I find that the form and content is in compliance with Section 52 of the *Act*.

I also accept the affirmed and undisputed testimony of the Landlord regarding the reasons for the One Month Notice. In particular, I accept the Landlord's testimony that the Tenants have paid rent late approximately five times since September 2018 and therefore find that the Landlord had cause to serve the notice pursuant to Section 47(1)(b) of the *Act*. I note that *Residential Tenancy Policy Guideline 38: Repeated Late Payment of Rent* states that three late rent payments are the minimum number to justify service of a One Month Notice.

I also accept the testimony of the Landlord that the Tenants did not pay the pet damage deposit within 30 days as required by the tenancy agreement. The tenancy agreement submitted into evidence states that \$875.00 was due for the pet damage deposit and notes that this amount was unpaid. As such, I find that the Landlord also had cause to serve the Tenants with the One Month Notice pursuant to Section 47(1)(a) of the *Act*.

The Landlord provided further testimony regarding the additional reasons for the One Month Notice. However, as I have found that the notice is valid based on repeated late payment of rent and due to not paying the pet damage deposit within 30 days of signing the tenancy agreement, I do not find it necessary to make further findings on the remainder of the reasons for the notice.

Instead, as I have found that the Landlord had at least two reasons to serve the Tenants with the One Month Notice, I find that the notice is valid. As the notice also complies with Section 52 of the *Act*, I find that the Landlord is entitled to an Order of Possession.

Pursuant to Section 53(1) of the *Act*, I find that the effective end of tenancy date is automatically corrected to June 30, 2019. As the rent is due on the first day of each month and one full rental month must be provided with a One Month Notice in accordance with Section 47(2) of the *Act* as follows:

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, I award the Landlord an Order of Possession on the corrected effective end of tenancy date of the One Month Notice; June 30, 2019 at 1:00 pm.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord may retain \$100.00 from the security deposit as satisfaction of this fee.

Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **June 30, 2019 at 1:00 pm** This Order must be served on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Section 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit to recover the filing fee paid for the application.

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: June 17, 2019

Residential Tenancy Branch