



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kensington Place Manor and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

The landlord filed an Application for Dispute Resolution on November 21, 2019 seeking an Order of Possession for the rental unit, as well as recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on January 16, 2020. In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The tenants and the landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. In the hearing I clarified the spelling of each person’s name. As a result, I have amended the landlord’s Application to include the correct spelling of both tenants.

The tenants confirmed receipt of the Application for Dispute Resolution as well as the documentary evidence presented by the landlord. The landlord submitted evidence of this in the form of registered mail tracking numbers to each of the tenants, dated November 29, 2019. I have confirmed the dates received as per Rules of Procedure 3.13. The tenants did not submit documentary evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted the following relevant evidentiary material:

- A copy of the residential tenancy agreement which was signed by the landlord's agent and the tenant on January 1, 2009, indicating a monthly rent of \$820.00 with a security deposit of \$410.00 paid, for the tenancy commencing on January 1, 2009;
- A copy of the One Month Notice to End Tenancy for Cause (the "Notice") dated October 31, 2019, citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk; the tenant or a person permitted on the property has engaged in illegal activity has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant and jeopardize a lawful right or interest of another occupant or the landlord and breach of a material term of the tenancy agreement that was not corrected within a reasonable time to do so. The Notice provides that the tenant had ten days from the date of service to apply for Dispute Resolution or the tenancy would end on the stated effective vacant date of November 30, 2019;
- A copy of the witnessed Proof of Service Notice to End Tenancy form which indicates that the Notice was posted on the tenant's door at 3:30 p.m. on October 31, 2019;
- A copy of the three 'Caution Notice to Tenant' documents dated August 23, 2019, September 19, 2019, and October 31, 2019;
- A copy of a written and email account of specific dates and occurrences of noise.

In the hearing, the landlord provided testimony on the discussions and verbal notices they gave to the tenant, reflective of the dates set out in the documentary evidence.

The tenants did not submit documentary material for this hearing. They acknowledged receipt of the Notice, though could not confirm the specific date. They acknowledged the reasons for the issuance of the Notice, and stated they are still living in the rental unit, having paid the rent for the month of January 2020.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - i. Has caused or is likely to cause damage to the landlord's property,
 - ii. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - iii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- c) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Section 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with the form and content requirements of section 52 of the *Act*. In accordance with sections 89 and 90 of the *Act*, I find the tenants were deemed served with the Notice on November 3, 2019, three days after its posting.

I have reviewed the oral testimony and documentary evidence and I find that the tenants did not dispute the Notice within ten days. The tenants confirmed this in the hearing. Based on the foregoing, I find that the tenants are conclusively presumed to have accepted that the tenancy has ended. The original effective date, November 30, 2019, is corrected to December 31, 2019 due to the three-day deemed service provision in November. The tenants have paid

rent for the month of January 2020 – by section 68(2) of the Act, I deem the effective date of the Notice to be January 31, 2020.

I find the landlord has the authority to issue the Notice under section 47 of the Act. I grant the landlord's request for an Order of Possession under section 55 of the Act.

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

Conclusion

Under section 55(3) of the Act, I grant an Order of Possession effective January 31, 2020.

Should the tenant fail to comply with this Order, this Order may be filed with and enforced through the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I grant the landlord a Monetary Order for the recovery of the filing fee paid for this application. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 Act.

Dated: January 20, 2020

Residential Tenancy Branch