



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 18, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated November 1, 2019 (the "One Month Notice") and;
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on January 9, 2020 as a teleconference hearing. Only the Landlord appeared and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 32 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 Landlord and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenants by registered mail on December 22, 2019. The Landlord submitted a registered mail receipt confirming the mailing. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on December 27, 2019, the fifth day after the registered mailing.

The Landlord was 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.

Issue(s) to be Decided

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

Background and Evidence

The Landlord stated that he owns a rental property which he has permitted the Tenants to occupy rent free since April 2019, in exchange for the protection of having someone reliable who will be able to conduct repairs and ensure the safety and security of the home. The Landlord stated that he resides outside of the country and he pays all the utilities and did not collect a security deposit from the Tenants. The Landlord stated that the parties do not have a formal written agreement between them.

The Landlord testified that he attended the rental property on October 24, 2019 to find that the Tenants appeared to be operating a small appliance repair and salvage business from the home as there were many appliances and parts left outside in the yard, as well as stored inside the rental property. Furthermore, the Landlord stated that there is approximately two tons of garbage accumulated outside in the yard, much of which appeared to be sheet rock which may contain asbestos. The Landlord provided photographic evidence in support.

The Landlord stated that he notified the Tenants in writing about his concerns and asked for these items to be removed as he is concerned about the environmental impact as well as legal impact this may cause him as the homeowner. The Landlord stated that the Tenants also have too many vehicles parked on the property which contradicts the city bylaws.

The Landlord stated that he spoke to the Tenants on October 24, 2019 and provided them written warning regarding his concerns and direction to remove the appliance, garbage and additional vehicle from the property or else the rental agreement between them would end. The Landlord provided a copy of the letter he provided to the Tenants in support.

The Landlord stated that the Tenants have not yet complied with his requests, therefore, the Landlord has subsequently served the Tenants with a One Month Notice for Cause dated November 1, 2019 with an effective vacancy date of January 1, 2020 by posting it to the Tenants' door on November 2, 2019. The Landlord provided an affidavit of service in support.

The Landlord stated that the Tenants did not vacate on the effective date of the One Month Notice and continue to occupy the rental property; therefore, the Landlord is seeking an order of possession in relation to the One Month Notice. If successful, the Landlord is 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 Landlord served the Tenants with a One Month Notice to End Tenancy for Cause dated November 1, 2019 with an effective vacancy date of January 1, 2019, by posting it to the Tenants' door on November 2, 2019. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenants are deemed to have been served with the One Month Notice on November 5, 2019, the third day after posting it to the door.

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 47(5) of the Act states that if a Tenant who has received a Notice does not make an Application for Dispute Resolution in accordance with Subsection (4), the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

As I have found that the Notice was deemed served on the Tenants on November 5 , 2019 and that there is no evidence before me that the Tenants applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenants are conclusively presumed to have accepted the end of her tenancy on January 1, 2020.

Having reviewed the One Month Notice, I find it complies with section 52 of the *Act*. Accordingly, I find that the Landlord is entitled to an Order of Possession effective on January 31, 2020 at 1:00 P.M. which must be served on the Tenants. If the Tenants do not vacate the rental unit, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with his Application seeking an order of possession for cause, I find the Landlord is entitled to a monetary order in the amount of \$100.00 for the return of the filing fee paid to make the Application, pursuant to Section 72 of the *Act*.

Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the *Act*, I grant the Landlord an Order of Possession to be effective on January 31, 2020 at 1:00 P.M. after Order is 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.

The Landlord is granted a monetary order in the amount of \$100.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 09, 2020

Residential Tenancy Branch