



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sea & Stream Apartments and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL, MNRL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on January 3, 2020 (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 December 19, 2019 (the "One Month Notice");
- a monetary order relating to unpaid rent; and
- an order granting recovery of the filing fee.

The Landlord's Agents K.O. and C.K., as well as the Tenants, and the Tenant's Advocate D.B. attended the hearing at the appointed date and time.

K.O. testified that she served the Application and documentary evidence package to each Tenant by registered mail on January 7, 2020. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenants confirmed during the hearing that they did not submit any documentary evidence in response to the Application.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the One Month Notice for Cause.

The Landlord's request for a monetary order relating to unpaid rent is dismissed with leave to reapply.

The parties 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.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice, 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 parties testified and agreed to the following; the tenancy started on July 2, 2019. Currently, the Tenants are required to pay rent in the amount of \$1,600.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 which the Landlord continues to hold.

K.O. testified that the Tenants have been repeatedly late paying rent in August, September, October and December 2019. K.O. stated that the Landlord subsequently served the Tenants with a One Month Notice for Cause dated December 19, 2019 with an effective vacancy date of January 31, 2020 by registered mail on December 19, 2019. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

In response, the Tenants confirmed having received the One Month Notice, however, could not recall the date it was received. The Tenants acknowledged that the rent was paid late as described by K.O. and stated that this was not their intent. The Tenants stated that recent health issues have contributed to them paying rent late.

Analysis

Based on the 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 Residential Tenancy Policy Guideline 38 states that a Landlord may end a tenancy where the Tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

The Landlord served the Tenants with a One Month Notice to End Tenancy for Cause dated on December 19, 2019 with an effective vacancy date of January 30, 2020, by registered mail on December 19, 2019. The Tenants confirmed receipt of the One Month Notice, however, could not recall the date. 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 December 24, 2019, the fifth day after the registered mailing.

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 December 24, 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 31, 2020.

I accept that the parties agreed that the Tenants have paid rent late to the Landlord in August September, October and December 2019. As such, I find that the Landlord has sufficient cause to end the tenancy.

In light of the above, I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenants. If the Tenants do 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 Landlord was successful with the 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 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 two days after notice 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.

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: March 06, 2020

Residential Tenancy Branch