



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL, OLC CNC-MT

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- more time to make an application to cancel the pursuant to section 66.

None of the tenants attended this hearing, although I left the teleconference hearing connection open until 11:13 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. Two representatives of the landlord attended the hearing (“**JH**” and “**MT**”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Two witnesses of the landlord called into the hearing as well, but I asked that they disconnect, and call back in when and if the landlord required their testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that JH, MT, and I were the only ones who had called into this teleconference.

JH testified that she served that the tenants SD and TL with the notice of dispute resolution form and supporting evidence package via registered mail on February 28, 2020. She provided two Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. Tenants PJ and JJ are not parties to the landlord’s application. I find that tenants SD and TL are deemed service with the required documents on March 4, 2020, five days after JH mailed them, in accordance with sections 88, 89, and 90 of the Act.

JH testified that the landlord was not served with the tenants' application, which was made by tenants JJ, PJ and SD.

Preliminary Issue – Effect of Tenants' Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord bears the onus to prove the validity of the Notice. However, the tenants bear the onus to prove that they are entitled to additional time in which they may file to dispute the Notice and that they are entitled to an order for the landlord to comply with the Act.

As the tenants failed to attend the hearing, I find that they have failed to discharge their evidentiary burden to prove that they are entitled to the order sought. Pursuant to Rule of Procedure 7.4, they (or their agent) must attend the hearing and present their evidence for it to be considered.

I dismiss, without leave to reapply, the tenants' application for additional time in which they may file to dispute the Notice and that for an order for the landlord to comply with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover their filing fee?

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the JH and MT, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting June 1, 2013. Monthly rent is \$1,385. The tenants paid the landlord a security deposit of \$582, which the landlord continues to hold in trust for the tenants.

JH testified that the tenants was served with the Notice on January 31, 2020 by posting it on the door of the rental unit.

The Notice indicates an effective move-out date of February 29, 2020.

The grounds to end the tenancy cited in the Notice were:

- 1) 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;
- 2) the 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;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
 - to jeopardize a lawful right or interest of another occupant or the landlord;
- 3) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The tenant did not dispute the Notice until February 29, 2020.

Analysis

Sections 47(4) and (5) of the Act state:

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit by that date.

Based on the testimony of JH and MT and the Notice before me, I find that the tenants were served with an effective notice. The tenants are deemed served with the Notice on February 3, 2020, three days after the landlord posted it on the door of the rental unit, in accordance with section 88 and 90 of the Act.

The tenants did not participate in the hearing or file an application to dispute the notice within 10 days of being deemed served with the Notice. Therefore, the tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice (March 31, 2020) and must vacate the unit. As this has not occurred, I find that the landlord is entitled to a two-day order of possession, pursuant to section 55(2) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the Act, the landlord may retain \$100 of the security deposit in full satisfaction of this monetary award. The landlord is cautioned to follow the provisions of section 38 of the Act regarding the balance of the security deposit.

Conclusion

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

In note that *Residential Tenancy (COVID-19) Order*, MO M089 (*Emergency Program Act*) made March 30, 2020 (the “**Emergency Order**”) permits an arbitrator to issue an

order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

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: April 27, 2020

Residential Tenancy Branch