



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution, made on March 12, 2020 (the "Application"). The Landlords 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 February 25, 2020 (the "One Month Notice");
- a monetary order for unpaid rent;
- and order to retain the security deposit and pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords, the Tenant's Advocate S.M., and the Tenant's Representative D.T. attended the hearing at the appointed date and time. At the beginning of the hearing, D.T. acknowledged receipt of the Landlords' Application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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.

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

Issue(s) to be Decided

1. Are the Landlords entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Are the Landlords entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on September 1, 2014. Currently, the Tenant is required to pay rent in the amount of \$959.40 which is due to be paid to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$437.50, as well as a pet damage deposit in the amount of \$437.50 which is being held by the Landlords.

The Landlords testified that the Tenant has been repeatedly late paying rent each month. The Landlords stated that the Tenant's rent is subsidized by the government, however, the Tenant is still required to pay the remaining portion of her rent each month. The Landlords stated that they continually have to remind the Tenant that the full amount of rent is due to be paid to the Landlords on the first day of each month. The Landlords stated that they subsequently served the Tenant with a One Month Notice for Cause dated February 25, 2020 with an effective vacancy date of April 30, 2020 by registered mail on February 25, 2020. The Landlord's reason for ending the tenancy on the One Month Notice is;

"Tenant is repeatedly late paying rent"

D.T. confirmed having received the One Month Notice near the end of February 2020. D.T. stated that no one for the Tenant disputed the One Month Notice. D.T. confirmed

that rent has been paid late and that there is currently an outstanding balance of rent owed to the Landlords. D.T. stated that there has been a breakdown in communication with the Landlords which has contributed to the difficulties in having the rent paid on time in full.

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 Landlords served the Tenant with a One Month Notice to End Tenancy for Cause dated on February 25, 2020 with an effective vacancy date of April 30, 2020 by registered mail on February 25, 2020. D.T. confirmed receipt near the end of February 2020. Based on the oral and written submissions of the parties, and in accordance with sections 88 and 90 of the Act, I find that the Tenant is deemed to have been served with the One Month Notice on March 1, 2020, 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 Tenant on March 1, 2020 and that there is no evidence before me that the Tenant applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenant is conclusively presumed to have accepted the end of her tenancy on April 30, 2020.

As the parties agreed that the Tenant has not paid rent for the month of May 2020, I find that the Landlord is entitled to a two-day Order of Possession which must be served on

the Tenant. If the Tenant does 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 his 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 Tenant is 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 Tenant. Should the Tenant 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: May 11, 2020

Residential Tenancy Branch