



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent on May 13, 2020. The landlord submitted two valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on May 18, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The monthly rent for this periodic tenancy is \$1,077.93 payable on the first of each month. A security deposit of \$500.00 was collected and is still held by the landlord. The rental unit is a suite in a multi-unit building with 54 individual units.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated March 20, 2020. The reasons provided on the notice for the tenancy to end are:

Tenant or a person permitted on the property by the tenant has

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The 1 Month Notice was posted on the rental unit door on March 20, 2020 and the landlord is unaware of the tenants filing an application to dispute the notice.

The landlord submits that the tenants have kept their rental unit in a state of considerable disarray and poor hygiene allowing for pests to breed in the suite and invade the other units in the building. The landlord also submits that the tenants have consistently failed to cooperate with the landlord's efforts to have pest control technicians attend and have refused entry despite notice being provided in accordance with the *Act*. The landlord submitted into documentary evidence copies of correspondence and pest control services reports showing the pattern of behaviour on the part of the tenants. The correspondence and materials show that the landlords have issued multiple warnings to the tenant dating from June 2019.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the tenant is deemed served with the 1 Month Notice on March 23, 2020, three days after posting, in accordance with sections 88 and 90 of the *Act*. I find that the tenant has failed to file an application for dispute resolution within 10 days of March 23, 2020, the timeline granted under section 47(4) of the *Act*. Accordingly, I find that the

tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, April 30, 2020.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

I am satisfied with the evidence of the landlord that the tenant has engaged in behaviour that has jeopardized the health and safety of the other occupants of the rental building through their failure to maintain the rental unit in a state of cleanliness and interfering with the landlord's attempts to eliminate pests. I find that the documentary evidence provided by the landlord clearly demonstrates that the tenant's conduct has been a long standing issue and that they have been given multiple written warnings that have gone ignored. I find that the tenants have allowed the rental suite to fall into a state of unhygienic repair such that it has allowed pests and vermin to breed and invade neighbouring suites, a clear jeopardy to the health and safety of the residents of the rental building.

The 1 Month Notice is dated March 20, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' security deposit of \$500.00 in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The security deposit for this tenancy is reduced by \$100.00 to \$400.00.

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: June 2, 2020

Residential Tenancy Branch