



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on July 1, 2020 (the "Application"). The Landlord applies for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.A., an agent. The Tenants, who are jointly and severally liable, were represented by N.S. Both L.A. and N.S. provided affirmed testimony.

On behalf of the Landlord, L.A. testified that the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail on July 7, 2020. Canada Post registered mail documents, which included customer receipts and tracking information, were submitted in support. N.S. also acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find these documents are deemed to have been received by the Tenants on July 12, 2020. The Tenants did not submit documentary evidence in response to the Application.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Ministerial Order M089, in effect from March 30 to June 23, 2020, confirmed that “a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect.” *Ministerial Order M195*, in effect from June 24, 2020 to present, confirms that a landlord must not give a tenant notice to end a tenancy under sections 46 or 47 of the *Act* in respect of “affected rent”, including late payment of affected rent. Affected rent is defined as “rent that becomes due during the emergency period” that commenced on March 18, 2020 and ends that date when the state of emergency expires or is canceled.

In this case, the One Month Notice was issued on February 25, 2020 on the basis that the Tenants were repeatedly late paying rent. However, I find that the One Month Notice is not impacted by either *Ministerial Order M089* or *Ministerial Order M195* as it was issued before the state of emergency which commenced on March 18, 2020.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2018. Rent in the amount of \$1,800.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$900.00, which the Landlord holds.

The Landlord sought an order of possession based on an undisputed One Month Notice to End Tenancy for Cause, dated February 25, 2020 (the "One Month Notice"). A copy of the One Month Notice was submitted into evidence. L.A. testified the One Month Notice was served on the Tenants by leaving a copy attached to the door of the Tenants' rental unit on February 25, 2020. In support of service, the Landlord submitted a signed Proof of Service document confirming service in this manner was witnessed by N.I. On behalf of the Landlord, L.A. testified she has not received notice that the Tenants disputed the One Month Notice although the Tenants continue to reside in the rental unit. L.A. also testified that the Tenants have not paid rent when due since April 1, 2020.

In reply, N.S. acknowledged receipt of the One Month Notice and confirmed the Tenants did not make an application to dispute it. N.S. also confirmed that the Tenants agreed to move out but have not. N.S. also testified that rent has not been paid as alleged and cited the end of her relationship with J.C., Covid-19, and her own health issues as reasons for failing to pay rent when due.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord to take steps to end a tenancy for cause. Section 47(4) confirms that a tenant who receives a notice to end tenancy under this section has 10 days to dispute the notice by making an application for dispute resolution. Section 47(5) of the *Act* confirms that failure to do so results in the conclusive presumption that the tenant accepts that the tenancy ends on the effective date of the notice to end tenancy and must vacate the rental unit. Other than the form and content requirements found in section 52 of the *Act*, the *Act* does not require an analysis of the merits of the notice to end tenancy.

In this case, I find that the Landlord served the One Month Notice on the Tenants by posting a copy to the door of the rental unit on February 25, 2020. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the One Month Notice is deemed to have been received by the Tenants on February 28, 2020. I also find the Tenants did not dispute the One Month Notice within 10 days after receipt as required by section 47(4) of the *Act*. Indeed, N.S. confirmed the Tenants did not dispute the Two Month Notice at all. As a result, pursuant to section 47(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit. However, N.S. continues to occupy the rental unit. Therefore, the Landlord is granted an order of possession which will be effective two (2) days after it is served on the Tenants.

Having been successful, I find the Landlord is entitled to recover the filing fee paid to make the Application, which I order may be deducted from the security deposit held.

Conclusion

The Landlord is granted an order of possession which will be effective two (2) days after it is served on the Tenants. The order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is entitled to recover the \$100.00 filing fee paid to make the Application, which I order may be deducted from the security deposit held.

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: July 30, 2020

Residential Tenancy Branch