



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's representatives and I were the only ones who had called into this teleconference.

Landlord ML confirmed that they handed the tenant the 1 Month Notice on December 28, 2020, as declared on a witnessed and signed Proof of Service document entered into written evidence for this hearing. Based on this undisputed oral and written evidence, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

Landlord AS, the landlord's legal counsel entered into written evidence that they sent the tenant a copy of the dispute resolution hearing package to the tenant by registered mail on January 20, 2021. They provided copies of the Canada Post Tracking Number to confirm this registered mailing. They stated that the Canada Post Online Tracking system confirmed that this package was delivered to the tenant on January 23, 2021. In

accordance with sections 89 and 90 of the *Act*, I find that the landlord's dispute resolution hearing package was deemed served to the tenant on January 25, 2021, the fifth day after their registered mailing.

The landlord's legal counsel also stated that a courier handed copies of the landlord's written and photographic evidence to the tenant on February 19, 2021. I find that the landlord's written evidence was served to the tenant in accordance with section 88 of the *Act* on February 19, 2021.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for cause based on the 1 Month Notice.? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On October 31, 2019, the parties entered into a fixed term Residential Tenancy Agreement for a tenancy that was to run from October 31, 2019 until July 31, 2020. When the initial term expired, the tenancy continued on a month-to-month basis. Monthly rent is set at \$3,600.00, payable in advance on the first of each month. The landlords continue to hold the \$1,800.00 security deposit and \$1,800.00 pet damage deposit for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by February 1, 2021, for the following reasons cited on that Notice:

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

- *put the landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Legal Counsel for the landlord said that the tenant has not filed an application to dispute the 1 Month Notice.

Landlord ML, the Property Manager for this property, testified that they received payments from the tenant for January, February and March 2021. They said that these payments were received for use and occupancy only and not to continue this tenancy beyond the February 1, 2021 effective date of the 1 Month Notice. Landlord ML testified that the most recent two payments had been received by automatic deposit from the tenant. They said that they only discovered that the most recent payment for March 2021 was forwarded to the landlord by automatic deposit the day before this hearing. They said that they had no effective way to discontinue the tenant's provisions of these payments to the tenant. However, Landlord ML testified that they intended to return the most recent payment to the tenant immediately, as it was not their intention to continue this tenancy. Both landlords requested an Order of Possession to take effect as soon as possible, as they were concerned that each time Landlord ML visits the rental premises more damage has occurred.

The landlords provided considerable photographic and written evidence to support their assertion that they had grounds to end this tenancy for cause. They also entered into written evidence a copy of three warning letters provided to the tenant on December 15, 2020, requiring corrective action to be taken by the time Landlord ML returned for an inspection on December 28, 2020. When Landlord ML returned on December 28, 2020, they issued the 1 Month Notice when the tenant had not taken measures to address the concerns raised in the three warning letters.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenant has failed to file his application for dispute resolution within the ten days of service 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 ended on the effective date of the 1 Month Notice, February 1, 2021. I also find that the landlord supplied ample undisputed written, oral and photographic evidence to justify their issuance of the 1 Month Notice to the tenant and to end this tenancy on the basis of the reasons cited in the 1 Month Notice.

Although payments have been received from the tenant by automatic deposit, the landlord's receipt of these payments for use and occupancy only does not in any way extend this tenancy beyond February 1, 2021, the effective date identified on the 1 Month Notice. Since the landlord has no control over automatic deposits provided to them, and Landlord ML testified that they intended to return the automatic deposit paid by the tenant in March 2021, I find that the landlord is entitled to end this tenancy on the basis of the 1 Month Notice.

Section 47(3) of the *Act* requires that "a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect within two days of the landlord's service of this Order to the tenant.

Since the landlord has been successful in this application, I allow their application to recover their \$100.00 filing fee from the tenant. I order the landlord to retain \$100.00 from the security deposit for this tenancy, the value of which is hereby reduced to \$1,700.00.

Conclusion

I allow the landlord's application to end this tenancy on the basis of the 1 Month Notice. I grant an Order of Possession to the landlord effective **two days after service of this Order** 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. I allow the landlord's application to recover their \$100.00 filing fee from the tenant. I order the landlord to retain \$100.00 from the tenant's security deposit to implement this decision. The revised value of the security deposit is reduced to \$1,700.00.

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: March 08, 2021

Residential Tenancy Branch