



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated November 24, 2020 ("One Month Notice"), and to recover the \$100.00 cost of his Application filing fee.

The Landlord and an advocate for the Landlord, S.A. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Advocate, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Advocate.

I explained the hearing process to the Landlord and Advocate and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord and the Advocate were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Advocate testified that she served each Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on December 18, 2020. The Advocate provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and continued to hear

from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Advocate provided her email address in the Application, and she provided the Tenants' email addresses in the hearing. The Landlord and Advocate also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Advocate requested a change to the address of the rental unit in the Application, as it states that the address is the "main" portion of the residential property, while it should have referred to the "upper" portion. She said the Tenants occupied the upper two floors of the residential property, and another tenant inhabited the lower unit. Accordingly, I amended the rental unit address in the Application per the Advocate's instructions, and pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord confirmed the contents of the tenancy agreement for this tenancy, indicating that the periodic tenancy began on September 1, 2020, with a monthly rent of \$2,600.00, due on the first day of each month. The Landlord said the Tenants paid him a security deposit of \$1,300.00, and no pet damage deposit. He said he still held the security deposit, as the Tenants did not provide him with a written forwarding address requesting the security deposit back. The Landlord said that the Tenants moved out on February 28, 2021, but that he still needs an Order of Possession, because they left a lot of possessions and damage behind.

The Landlord submitted a copy of the One Month Notice, which was signed and dated November 24, 2020, and which has the rental unit address. The One Month Notice served by being posted on the door of the rental unit on November 24, 2020, and it has an effective vacancy date of December 31, 2020. It was served on the grounds that the Tenants or a person permitted on the property by the Tenants have 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; and put the Landlord's property at significant risk.

In the hearing, I asked the Landlord what type of behaviour on the Tenants' part led him to serve the eviction notice. He said:

A lot of neighbours complained about domestic violence and noise, which required me to talk to the Tenants repeatedly about this. There was smoke damage to the house and property, and to the tenant below. They were a general public nuisance - smoking and doing drugs, with neighbours continually complaining. It forced me to end the tenancy.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Pursuant to section 90 of the Act, I find that the Tenants were deemed served with the One Month Notice on November 27, 2020, three days after it was posted to the door of the rental unit. Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, 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 there is no evidence before me that the Tenants disputed the One Month Notice, I find that they are conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on December 31, 2020. As a result, I find that the Tenants were (or are) overholding the rental unit and that the Landlord is, therefore, entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the effective vacancy date has passed, the Order of Possession will be effective two days after service on the Tenants.

I also find that the Landlord is entitled to recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, which he is authorized to retain from the Tenants' security deposit.

Conclusion

The Landlord is successful in his Application for an Order of Possession and recovery of the \$100.00 Application filing fee from the Tenants.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible.

Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72 of the Act, I authorize the Landlord to retain \$100.00 from the Tenants' security deposit, in full satisfaction of an award for recovery of the Application filing fee.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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