



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FRIND WINERY LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On January 29, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenant and a second Tenant A.P. attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. The Tenants acknowledged that they did not submit any evidence.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The month-to-month tenancy began on February 1, 2020. In July 2020, the property sold to a new Landlord and the tenancy continued. The rent was \$1,400.00 and due on the first of each month. The Landlord did not collect a security deposit.

The Landlord provided undisputed testimony that a One Month Notice to End Tenancy for Cause, dated January 15, 2021 (the "One Month Notice"), was delivered to the Tenants on January 15, 2021. The effective/move-out date on the One Month Notice was for February 17, 2021. The Landlord issued the One Month Notice as the Tenants were repeatedly late paying rent.

The Landlord submitted documentary evidence to demonstrate that September 2020, October 2020, November 2020, and December 2020 rent was paid late. The Landlord testified that the January 2021 rent was paid on February 1, 2021 after the issuance of the One Month Notice and February 2021 rent was paid on February 4, 2021.

As the Tenants did not dispute the One Month Notice and are still occupying the rental unit, the Landlord has requested an Order of Possession for May 31, 2021, providing the Tenants some time to move out.

The Tenants testified that they received a notice to end tenancy in September 2020, so did not pay rent for October 2020. When they realized that the tenancy was continuing, they began to pay rent again in November 2020. The Tenants stated that they received the One Month Notice in January 2021 and, although it took them some time, began to start paying rent on time.

The Tenants acknowledged that they did not dispute the One Month Notice. The Tenants requested, if an Order of Possession was going to be granted, to have some time to find another place to live.

Analysis

Based on the Landlord's undisputed evidence, I am satisfied that the Landlord had sufficient grounds to issue the One Month Notice and obtain an end to this tenancy for cause; specifically, the repeatedly late payment of rent by the Tenant.

The Tenant did not make application pursuant to Section 47(4) of the Act within ten days of receiving the One Month Notice. In accordance with Section 47(5) of the Act, the Tenant's failure to take this action within ten days led to the end of this tenancy on the corrected effective date of the One Month Notice: February 28, 2021.

As the Tenant is still occupying the rental unit and the One Month Notice is compliant with section 52 of the Act, I find that the Landlord is entitled to an Order of Possession with an effective date, as requested, of May 31, 2021.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

As such, I order the Tenants to pay \$1,500.00 (May rent of \$1,400.00 plus \$100.00 for the filing fee) on May 1, 2021 to the Landlord for the use and occupancy of the rental unit for May 2021.

Conclusion

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on May 31, 2021 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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: April 27, 2021

Residential Tenancy Branch