



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, OLC, OPC, FFL

Introduction

On March 15, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 66 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On March 17, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant A.S. attended the hearing with F.S. attending as his advocate. M.D. and D.C. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were informed to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of M.D., provided a solemn affirmation.

F.S. advised that she did not serve the Notice of Hearing package to the Landlord at all, contrary to Rule 3.1 of the Rules of Procedure. As the Tenants did not comply with the

Rules of Procedure and serve the Notice of Hearing package to the Respondent within three days of March 19, 2021, I dismiss this Application without leave to reapply.

M.D. advised that each Tenant was served a Notice of Hearing package by registered mail on March 22, 2021. F.S. confirmed that the Tenants received these packages. Based on this undisputed testimony, I am satisfied that the Tenants were duly served the Landlord's Notice of Hearing packages.

F.S. advised that the Tenants' evidence was not served to the Landlord. As this evidence was not served to the Landlord in accordance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and will not consider it when rendering this Decision.

M.D. advised that the Landlord's evidence was served to the Tenants by placing it in their mailbox on June 7, 2021. F.S. confirmed that the Tenants received this evidence on that date and that she was prepared to respond to it. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2012, that rent was currently established at \$1,014.00 per month, and that it was due on the first day of each month.

A security deposit of \$445 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

The parties turned their minds to reaching a full and final settlement agreement. The parties were able to reach an agreement and I have recorded the terms of agreement by way of this Decision and the conditional Order of Possession that accompanies it.

Settlement Agreement

I raised the possibility of settlement pursuant to Section 63(1) of the *Act* which allows an Arbitrator to assist the parties to settle the dispute. I explained to the parties that settlement discussions are voluntary, that if they chose not to discuss settlement I would make a final and binding Decision on the matter, and that if they chose to discuss settlement and did not come to an agreement, that I would make a final and binding Decision on the matter.

I advised the parties that if they did come to an agreement, I would write out this agreement in my written Decision and make any necessary Orders. I also explained that the written Decision would become a final and legally binding agreement. The parties did not have questions about discussing a settlement when asked.

The parties reached the following full and final settlement agreement during the hearing:

1. The Tenants will maintain possession of the rental unit but must give up vacant possession of the rental unit at **1:00 PM on August 31, 2021**.
2. The Tenants must continue to pay July and August 2021 rent in accordance with the terms of tenancy agreement.
3. The parties agreed that fulfilment of these conditions would amount to full and complete satisfaction of this dispute.

This settlement agreement was reached in accordance with Section 63 of the *Act*. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that they understood the binding nature of this full and final settlement of these disputes.

If condition one is breached, the Landlord is provided with a conditional Order of Possession effective **two days** after service of this Order on the Tenants.

Conclusion

The parties reached a full and final settlement agreement in resolution of their disputes. I have recorded the terms of settlement in this Decision and in recognition of the settlement agreement, I hereby Order that if the Tenants breach condition one of this settlement agreement, the Landlord is provided with a formal copy of a conditional Order of Possession effective **two days after service of this Order** on the Tenants. Should the Tenants or any occupant 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.

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 22, 2021

Residential Tenancy Branch