



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd.
and [tenant name suppressed to protect privacy]

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 February 2, 2021 ("One Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, A.G. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. One witness for the Landlord, H.H. ("Witness"), provided affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agent and the Witness, 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 Agent and the Witness.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent and the Witness 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 Agent testified that she served the Tenants with the Notice of Hearing documents

by Canada Post registered mail, sent on March 26, 2021. The Landlord provided Canada Post tracking numbers as evidence of service. The Agent said that she also served the Tenants by placing a copy of the required documents on their door on March 26, 2021. 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 I continued to hear from the Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and she confirmed this in the hearing. She also confirmed her understanding that the Decision would be emailed to the Landlord and mailed to the Tenants, and any Orders will be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Agent that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Agent confirmed the details set out in the tenancy agreement about this tenancy. She confirmed that the fixed-term tenancy began on September 15, 2019, ran to August 31, 2020, and then operated on a month-to-month basis. The Agent confirmed that the Tenants paid the Landlord a monthly rent of \$1,160.00 and \$10.00 parking, due on the first day of each month. The Agent confirmed that the Tenants paid the Landlord a security deposit of \$580.00, and a pet damage deposit of \$580.00, and that the Landlord still holds these deposits.

The Agent confirmed that she served the Tenants with the One Month Notice, which was signed and dated February 2, 2021, which has the rental unit address, which was served by attaching it to a door on February 2, 2021, and which has an effective vacancy date of March 31, 2021. The Agent said that the One Month Notice 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.

In the “Details of Event” section of the One Month Notice, the Agent wrote: “The tenants in [rental unit address] have unreasonably disturbed other tenants to the point of causing them to be frightened and stressed. Arguing, slamming the patio door and walking loudly late in the evening and early morning hour. This is a regular occurrence.”

In the hearing, the Agent said:

We sent a notice to the Tenants upstairs, because they interfere with the quiet enjoyment of other tenants. It has not been corrected in a reasonable time. Those noises in the late hours, especially, interfere with sleep and quiet enjoyment. We have nothing else to do but to serve an eviction notice.

The Landlord said that she sent caution notices to the Tenants about the need to correct this behaviour on October 7, 2019, January 30, 2020, June 25, 2020, and July 22, 2020. She said the behaviour did not improve with these cautions, therefore she served them with the One Month Notice.

The Witness said:

I live directly underneath them. I wrote a letter to management about the ongoing noise, there has been screaming from the female, loud conversations, walking with shoes on. There is dog barking in the evening, mainly, and items being dropped on uncarpeted floors, loud banging, patio, and cupboard doors being slammed shut. There are arguments that resulted in the police being called on three occasions, and inappropriate and intimidating communications from them over the balcony railing. This goes from late at night to the early, early morning. Sometimes we don't get any sleep at all.

Analysis

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

Based on the documentary evidence and testimony before me for consideration, and

pursuant to section 90 of the Act, I find that the Tenants were deemed served with the One Month Notice on February 5, 2021, 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 March 31, 2021. As a result, I find that the Tenants are overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the effective date has passed, the Order of Possession will therefore be effective two days after deemed service on the Tenants.

I also find that the Landlord is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the Act, which they are authorized to retain from the Tenants' security deposit in complete satisfaction of this award.

Conclusion

The Landlord is successful in this Application. 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 award the Landlord with recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain \$100.00 of the Tenants' security deposit in complete satisfaction of this award.

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: July 12, 2021