



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDL-S, FFL

Introduction

On April 7, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice") pursuant to Section 47 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

L.B. and B.B. attended the hearing as agents for the Landlord. Both Tenants attended the hearing as well. 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, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all in attendance provided a solemn affirmation.

L.B. advised that a Notice of Hearing package was served to each Tenant by registered mail on April 15, 2021 and Tenant O.A. confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were duly served the Landlord's Notice of Hearing package.

He also advised that the Tenants were served with the Landlord's evidence by registered mail on July 7, 2021 and O.A. confirmed that this was received. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

O.A. advised that they did not submit any evidence for consideration on this file.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. The Landlord was advised that this hearing would primarily address the Notice, and the other claims were dismissed with leave to reapply. The Landlord is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral 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 August 1, 2020, that rent was established at an amount of \$1,425.00 per month, and that it was due on the first day of each month. A security deposit of \$712.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

L.B. advised that the Notice was served to the Tenants by posting it to their door on February 24, 2021 and a proof of service form was submitted to corroborate service. O.A. also confirmed that they received this Notice; however, he was not exactly sure when this was received.

The Landlord served the Notice for a number of reasons and the effective end date of the tenancy on the Notice was noted as March 31, 2021.

O.A. advised that he did not make an Application to dispute the Notice because a representative of the Landlord visited the rental unit and spoke to him of some concerns in the rental unit. He stated that they had a verbal agreement about these issues. He alleged that this person told him not to worry about the Notice; however, he did not have any proof of this.

He also testified that he received an email from the Landlord after that at some point regarding some repair issues; however, he could not find any email where the Landlord rescinded the Notice. He read from an email dated April 29, 2021; however, nowhere in this email was there any indication that the Landlord had withdrawn the Notice.

Tenant F.A. could not provide any testimony corroborating O.A.'s belief that there was an agreement from the Landlord to rescind or withdraw the Notice.

L.B. advised that the Landlord never rescinded or withdrew the Notice at any point and the Tenants were provided with receipts for use and occupancy only for any payments of rent after the effective date of the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

With respect to the Notice served to the Tenants on February 24, 2021, I have reviewed this Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I find that this Notice meets all of the requirements of Section 52.

The undisputed evidence is that the Notice was served to the Tenants by posting it to their door on February 24, 2021. According to Section 47(4) of the *Act*, the Tenants had 10 days to dispute this Notice, and Section 47(5) of the *Act* states that *“If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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 this Notice was posted on February 24, 2021, it would be deemed to have been received on February 27, 2021. As such, the tenth day to dispute this Notice fell on March 9, 2021 and the undisputed evidence is that the Tenants did not make an Application to dispute this Notice at any time. I find it important to note that the information with respect to the Tenants’ right to dispute the Notice is provided on the third page of the Notice.

While O.A. claims that the Landlord rescinded or withdrew the Notice, I do not find that there has been any documentary evidence submitted to support this allegation. Moreover, as receipts were issued for use and occupancy only for rent payments from April to July 2021, I find that this is consistent with the Landlord not wanting the tenancy to be re-instated after the effective end date of the tenancy on the Notice.

Ultimately, as the Tenants did not dispute the Notice, and as there was no documentary evidence provided confirming that the Tenants had any extenuating circumstances that prevented them from disputing the Notice, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice. As such, I find that the Landlord is entitled to an Order of Possession.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of the amount awarded.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. This Order must be served on the Tenants by the Landlord. Should the Tenants 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: July 27, 2021

Residential Tenancy Branch