



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNDL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord has requested an order of possession, a monetary order for \$1,400.00 for garbage removal, and to recover the cost of the filing fee.

An agent for the landlord, HZ (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding document dated July 13, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on each tenant by registered mail, with one package addressed to each of the tenants at the rental unit address on July 15, 2021. The Canada Post registered mail tracking numbers were submitted in evidence and have been included on the style of cause for ease of reference and identified as 1 for tenant AG, and 2 for tenant DYK. According to Canada Post online registered mail tracking website, both packages were mailed on July 15, 2021 and were both unclaimed and returned to sender, arriving on August 26, 2021 to the landlord. Pursuant to section 90 of the Act, I deem both parties to have been sufficiently served as of July 20, 2021, which is 5 days after the registered mail was mailed to the parties as the landlord confirmed the rental unit is still occupied.

Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord had no email address for either tenant, the decision will be sent by regular mail to both tenants.

Furthermore, I find the landlord's application is for a monetary claim and an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated April 17, 2021 (1 Month Notice). Pursuant to section 64(3)(c) of the Act, I amend the landlord's application from code OPN to code OPC to reflect the order of possession requested based on an undisputed 1 Month Notice.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2020 and reverted to a month-to-month tenancy as of April 30, 2021.

The agent confirmed service of the 1 Month Notice by personal service on tenant, AG in the afternoon of April 17, 2021 at the rental unit. The agent stated that the tenants did not file an application to dispute the 1 Month Notice and the rental unit remains occupied. The agent also stated that the tenants have paid for use and occupancy for October 2021 and that the landlord is seeking an order of possession.

The 1 Month Notice lists 2 causes as follows:

1. Tenant or a person permitted on the property by the tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.
2. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The Details of Cause(s) section of the 1 Month Notice reads as follows:

Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):
The tenants put a lot of garbage in the yard. We have asked them to clean the garbage many times. The problem is ongoing and is never resolved. The city had issued the ticket for "No owner or occupant of property within the City of Surrey shall permit or allow the property to become or remain unsightly". The date is June 13, 2020.
However, the tenants did not improve and there are still a lot of garbage in the yard.
We worried we could get more fines.

The agent presented several colour photos showing an unsightly property as described by the City of Surrey and the fines imposed by the City of Surrey submitted in evidence. The agent stated that after many attempts to have the tenants clean the property, the tenants have refused, and the property is unsafe as a result and the landlord is also concerned about more fines from the City of Surrey.

The effective vacancy date listed on the 1 Month Notice is May 31, 2021.

Regarding the monetary claim, the agent confirmed that they are estimating that the cleanup costs would be \$1,400.00; however, did not provide a breakdown of how the landlord reached \$1,400.00 or a quote from a cleaning company, etc.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the Act states that if the tenants once served with the 1 Month Notice do not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenants are conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before

me, the tenants did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date, which was May 31, 2021. As the rental unit remains occupied, I find the tenants are overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **October 31, 2021 at 1:00 p.m.** I have used this date as the agent confirmed that money has been paid for use and occupancy for October 2021. In addition, I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act.

Monetary claim – I find the landlord has provided insufficient particulars as to how they reached the amount of \$1,400.00 claimed for cleaning costs. Pursuant to section 59 of the Act, I dismiss cleaning costs with leave to reapply as I am not satisfied that the amount was properly broken down for consideration at this proceeding. Leave to reapply does not extend any applicable timelines under the Act.

As the landlord's application had some merit, and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I authorize the landlord pursuant to section 67 and 72 of the Act to retain \$100.00 from the tenant's security deposit of \$1,400.00 in full satisfaction of the recovery of the cost of the filing fee. I find that the tenant's new security deposit balance is \$1,300.00 effective immediately, pursuant to section 62(3) of the Act.

Conclusion

The landlord's application is partially successful. The tenancy ended on May 31, 2021. The tenants have been overholding the rental unit since May 31, 2021.

The landlord is granted an order of possession effective October 31, 2021 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenants are reminded that they can be held liable for all costs related to the enforcement of the order of possession.

The landlord's monetary claim for cleaning is dismissed with leave to reapply as I am not satisfied that the amount of \$1,400.00 was properly broken down in the claim before me pursuant to section 59 of the Act.

The landlord has been authorized pursuant to section 67 and 72 of the Act, to retain \$100.00 from the tenant's security deposit of \$1,400.00 in full satisfaction of the

recovery of the cost of the filing fee. The tenant's new security deposit balance is \$1,300.00 effective immediately, pursuant to section 62(3) of the Act.

The decision and order will be emailed to the landlord. The decision will be sent by regular mail to the tenants. The landlord must serve the order of possession on the tenants.

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: October 20, 2021

Residential Tenancy Branch