



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 27, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 16, 2021 (the “Notice”)
- To recover the filing fee

The Landlord appeared at the hearing and appeared for Landlord T.E. Nobody appeared at the hearing for the Tenants. The hearing proceeded for 16 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord provided the correct rental unit address which is reflected on the front page of this decision.

The Tenants submitted the Notice and the tenancy agreement as evidence prior to the hearing. The Landlord submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package. The Landlord confirmed admissibility of the Tenants’ evidence is not an issue given the nature of the evidence. The Landlord testified that they served their evidence on the Tenants in person January 31, 2022.

I accept the Landlord's undisputed testimony about service of their evidence and find the Landlord complied with rule 3.15 of the Rules and section 88(a) of the *Residential Tenancy Act* (the "Act") in relation to serving their evidence on the Tenants.

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession based on the Notice?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started October 01, 2020 and was for a fixed term ending September 30, 2021. Rent is \$1,800.00 per month due on the first day of each month.

The Notice was submitted. The Notice is addressed to the Tenants and relates to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of September 30, 2021. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The "Details of Cause" section of the Notice outlines the following. An incident occurred August 13th during which a person connected to the Tenants was at the front door of the building being aggressive and creating an unsafe and unwelcome environment. The police were called in relation to the incident. The strata council have requested that the Tenants be evicted. The Landlords have received complaints about the Tenants since the tenancy started and have provided the Tenants written and verbal warnings about these complaints.

The Landlord testified that the Notice was served on the Tenants in person on August 16, 2021 and that they made an error when dating the Notice September 16, 2021.

The Landlord testified that the Notice was issued for the following reasons. They were contacted by the police about the altercation on August 13th during which someone connected to the Tenants was outside the building agitated, belligerent and making threats to other residents of the building. A couple other residents of the building called the police because they were frightened. The Landlord has received other complaints about the Tenants. The strata has informed the Landlord that the Tenants are not suitable for the building. The issues with the Tenants have resulted in significant interference and unreasonable disturbance of other residents of the building. The Landlord has provided the Tenants warnings about the complaints received.

The Landlord sought an Order of Possession effective February 28, 2022.

The following documentary evidence was submitted:

- The Notice
- The tenancy agreement
- A notice of complaint dated August 19, 2021
- Emails
- Letters to the Tenants
- Complaints

Analysis

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I dismiss the Application without leave to re-apply because the Tenants did not appear at the hearing to provide a basis for the Application.

The Notice was issued pursuant to section 47 of the *Act* and the following subsection:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property...

The Tenants had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*.

I accept the undisputed testimony of the Landlord that they served the Notice on the Tenants in person August 16, 2021. I find the Notice was served in accordance with section 88(a) of the *Act*. I find the Tenants received the Notice August 16, 2021.

The Tenants filed the Application September 27, 2021, past the 10-day deadline for disputing the Notice. The Tenants did not apply for more time to file the dispute. The Tenants did not attend the hearing to dispute the service date or explain why the Notice was disputed late.

I find section 47(5) of the *Act* applies and the Tenants are conclusively presumed to have accepted that the tenancy ended September 30, 2021, the effective date of the Notice. The Tenants were required to vacate the rental unit by September 30, 2021.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Tenants' dispute of the Notice has been dismissed without leave to re-apply given nobody attended the hearing for the Tenants to provide a basis for the dispute. Further, the Tenants are conclusively presumed to have accepted the Notice pursuant to section 47(5) of the *Act*. I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. I issue the Landlord an Order of Possession effective at 1:00 p.m. on February 28, 2022.

Conclusion

The Landlord is issued an Order of Possession pursuant to section 55(1) of the *Act*. The Order is effective at 1:00 p.m. on February 28, 2022. The Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: February 08, 2022

Residential Tenancy Branch