



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

This expedited hearing was convened by way of conference call concerning an application made by the tenants seeking an Order of Possession of the rental unit and to recover the filing fee from the landlord for the cost of the application.

Two of the named tenants attended the hearing, representing all tenants, and one of the tenants gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the landlord joined the call.

The tenant testified that the landlord was served with the Notice of Dispute Resolution Proceeding and all evidence on January 21, 2022 by posting the documents to the landlord's door. A Proof of Service document has been provided for this hearing, signed by the tenant who served the documents and a witness. I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

All evidence of the tenants has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established that an Order of Possession should be granted to the tenants?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 25, 2017 and reverted to a month-to-month tenancy after June 30, 2018 and the tenants still reside in the rental

unit. Rent in the amount of \$2,250.00 is payable on the 1st day of each month and there are no rental arrears. On May 19, 2017 the landlord collected a security deposit from the tenants in the amount of \$1,125.00, which is still held in trust by the landlord. The tenant is not certain if a pet damage deposit was also collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that there have been significant issues with the strata, not the owner. The strata manager has been harassing the tenants, and the way he talks to the tenant's father is very disrespectful. The first year was good, but the tenants started receiving complaints from the strata and if the tenants don't respond, the strata manager issues fines of \$200.00. The tenants have never received a copy of any strata by-laws.

On January 13, 2022 the owner locked the tenants out of the rental complex and told security to cancel all building fobs because the tenants didn't pay the strata fines. The tenant disputed the fines, but there was no compliance with any legal proceedings. The Residential Tenancy Branch Compliance Department got ahold of the owner and agent, and about 20 minutes later the fobs worked, but the tenant had to stay home for 6 days to ensure the tenants could maintain access to the building and the rental unit. The tenants are fearful that the landlord or the strata will again deactivate the fobs.

The landlord served the tenants with a One Month Notice to End Tenancy for Cause, which was disputed by the tenants. At the hearing, the tenants' application was dismissed with leave to reapply because the tenants had not served the landlord. Then the tenant applied for this expedited hearing. The landlord has not served the tenants with a Notice of Dispute Resolution Proceeding with respect to the One Month Notice to End Tenancy for Cause.

During the hearing, I found it necessary to determine whether or not a hearing is scheduled with respect to the One Month Notice to End Tenancy for Cause. A hearing is scheduled for April 14, 2022.

Analysis

The *Residential Tenancy Act* states:

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

In this case, the tenant testified that once the Residential Tenancy Branch Compliance department got ahold of the landlord, the tenants' fobs were activated and the tenants currently have possession. Therefore, I decline to grant an Order of Possession in favour of the tenants.

A hearing is scheduled with respect to a One Month Notice to End Tenancy for Cause. The *Residential Tenancy Act* specifies how a tenancy ends, which does not include locking a tenant out of a rental unit or building. The tenants are concerned that the landlord or the strata might do that again. Pursuant to my authority under Section 62 of the *Residential Tenancy Act*, I order the landlord to comply with the *Act* by ensuring that the tenants have access to the building and to the rental unit until the tenancy has ended in accordance with the law.

Since the strata and the landlord have caused the tenants to make this application, I find that the tenants are entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants in that amount, and I order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover if by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenants' application for an Order of Possession is hereby dismissed.

I hereby order the landlord to ensure that the tenants have access, including keys and building fobs, to the rental building and the rental unit until the tenancy has ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I

order that the tenants be permitted to reduce rent for a future month by that amount, or may otherwise recover it.

This order is final and binding and may be enforced.

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: February 07, 2022

Residential Tenancy Branch