



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on October 25, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order to cancel a One Month Notice to End Tenancy for Cause dated August 3, 2021 (the "One Month Notice").

The Tenants and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenants are unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on August 4, 2020. Currently, the Tenants are required to pay rent in the amount of \$2,000.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$900.00, each of which are currently being held by the Landlord. The parties confirmed the Tenants continue to occupy the rental unit.

The Landlord stated he is seeking to end the tenancy for several reasons. The Landlord stated that the Tenants have stolen trees from the property, smoke on the property despite the no smoking term in the tenancy agreement, are swearing and display abusive behaviour, leave dog faeces on the property, and are damaging the septic tank as a result of grease and pet hair.

For the above-mentioned reasons, the Landlord stated that he served the Tenants in person with the One Month Notice on August 3, 2021 with an effective vacancy date of September 30, 2021. The Landlord's reasons for ending the tenancy on the One Month Notice are;

The Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit/site/property/park.

The Tenants confirmed having received the One Month Notice on August 3, 2021 and disputed the One Month Notice on October 25, 2021. The Tenants could not explain why after receiving the One Month Notice on August 3, 2021, they waited until October

25, 2021 to dispute the One Month Notice only stating “*we’re not sure what happened in that time lapse*”

The Tenants denied each of the Landlords claims and stated that the Landlord is responsible for maintaining the septic field and that the Landlord only wants to evict the Tenants so that he can repair the septic tank. The Tenants stated that the Landlord has served an improper Notice as it should have been a Two Month Notice for Landlord’s Use for Renovation or Repairs. The Tenants feel as though they should be entitled the one month compensation as part of the Two Month Notice which has not been served to the Tenants.

Analysis

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

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenants in person with a One Month Notice dated on August 3, 2021 with an effective vacancy date of September 30, 2021. The Tenants confirmed having received the One Month Notice on August 3, 2021. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice 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 the Tenants confirmed receiving the One Month Notice on August 3, 2021 and applied for Dispute Resolution on October 25, 2021 I find that the Tenant’s Application was made well outside the 10 days permitted under the Act. I further find that the Tenants have not applied for more time to cancel the Notice for an extenuating circumstance. During the hearing, the Tenants could not explain what prevented them from applying within the 10 days after receiving the One Month Notice. I find that the

Tenants are conclusively presumed to have accepted the end of her tenancy on the effective date of the One Month Notice.

As the effective date of the One Month Notice has passed, I find that the Landlord is entitled to an Order of Possession which is effective on order before 1:00PM on March 31, 2022. The Order of Possession must be served on the Tenants as soon as possible. If the Tenants do not vacate the rental unit by the effective date, the Landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective at 1:00PM on March 31, 2022 after the Order is served on the Tenants. 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: March 08, 2022

Residential Tenancy Branch