



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

On February 1, 2022, 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").

The Landlord and both Tenants attended the hearing. 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 parties in attendance provided a solemn affirmation.

The Landlord advised that the Notice of Hearing packages were both served to one of the Tenants by hand February 12, 2022, contrary to Rule 3.1 of the Rules of Procedure. Tenant E.B. confirmed that they received both packages at once and he did not have any issues with both packages only being served to one of them. As such, I am satisfied that the Tenants were duly served with the Landlord's Notice of Hearing packages, and I do not find it prejudicial to continue the hearing.

The Landlord also advised that she did not serve her evidence to the Tenants because they already had these documents. E.B. confirmed that they had these documents in

their possession and that they were prepared to proceed regardless. As such, I do not find it prejudicial to continue the hearing.

E.B. advised that they did not submit any documentary evidence for consideration on this file.

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?

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 most current tenancy started on February 1, 2021, that rent was established at an amount of \$900.00 per month, and that it was due on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were supposed to be paid. A copy of the signed tenancy agreement, without page three of this agreement, was submitted as documentary evidence.

The Landlord testified that the Notice was served to the Tenants by hand on August 17, 2021, and E.B. confirmed receiving it on this date. The reasons the Landlord served the Notice are because of a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." and because "Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement." The effective date of the Notice was noted as November 30, 2021.

E.B. advised that they received the Notice on August 17, 2021, that they were injured, and that they ran out of time to dispute the Notice. He stated that they did not pursue disputing the Notice at any other time after they had recovered. In addition, he acknowledged that while the dispute address was noted incorrectly by the Landlord on the Notice, they understood that this Notice was applicable for the rental unit for which they resided.

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.

With respect to the Notice served to the Tenants on August 17, 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*. Despite the Landlord indicating the wrong address that the Tenants were supposed to vacate from, as the Tenants acknowledged that they were aware this Notice applied for the rental unit, I find that this Notice meets all of the requirements of Section 52.

As per Section 90 of the *Act*, as the Notice was received immediately, 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."*

After being served the Notice, the tenth day fell on Friday August 27, 2021, and the undisputed evidence is that the Tenants did not make an Application to dispute this Notice. Furthermore, the Tenants advised that they had been in possession of the Notice since then, and still had not disputed the Notice. I find it important to note that the information with respect to the Tenants' right to dispute the Notice is provided on the first page of the Notice.

Ultimately, as the Tenants did not dispute the Notice, and as there was no documentary evidence provided corroborating 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. I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants.

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: April 11, 2022

Residential Tenancy Branch