



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MURRAY HILL DEVELOPMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MNRL-S MNDCL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on a undisputed 1 Month Notice to End Tenancy for Cause dated February 8, 2022 (1 Month Notice), for a monetary claim of \$3,532.16 for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

A property manager/agent for the landlord, WCT (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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated March 2022 (Notice of Hearing), the application and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by posting to the tenant's door on March 11, 2022 at 5:00 p.m., which was witnessed by KL. Section 89(1) of the Act does not permit an application for a monetary claim to be posted to the door so as a result, the agent was advised that their monetary claim would be dismissed with leave to reapply due to a service issue. The order of possession application can be posted to the door and documents served in that method are deemed served 3 days after they are posted. Therefore, I find the tenant was was duly served on March 14, 2022 with the application for an order of possession. As the tenant did not attend the hearing, I find this application to be undisputed by the tenant.

Issue(s) to be Decided

- Should the landlord be granted an order of possession under the Act based on the 1 Month Notice?
- If yes, should the landlord recover 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 December 1, 2021 and is scheduled to convert to a month-to-month tenancy after November 30, 2022. The monthly rent is \$1,575.00 per month and due on the first day of each month. The tenant paid a security deposit of \$787.50, which the landlord continues to hold.

The agent confirmed service of the 1 Month Notice by posting the 1 Month Notice on the rental unit door on February 8, 2022 at 4:30 p.m., which was witnessed by KL. The 1 Month Notice listed an effective vacancy date of February 18, 2022, which automatically corrects under the Act and will be discussed further below. The agent stated the tenant did not file an application to dispute the 1 Month Notice and the agent stated they are seeking an order of possession as they are not sure if the tenant continues to occupy the rental unit as they have not returned the rental unit keys.

The landlord stated that he did not believe the tenants disputed the Notice. The landlord stated that one of the tenants laughed at him when he served the Notice stating that they could live there for several months and used rude language with the landlord. The cause listed says:



Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.

The Details of Dispute indicate that the tenant fired a pellet gun/rifle at another tenant in the building and the RCMP were called as a result.

Analysis

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

Order of possession - I find that the tenant was served with the Notice on February 11, 2022, which is 3 days after the 1 Month Notice was posted to the door on February 8, 2022, which was witnessed by KL. The tenants are conclusively presumed pursuant to

section 47 of the Act, to have accepted that the tenancy ends on the effective date of the Notice, which automatically corrects under section 53 of the Act to March 31, 2022. Accordingly, I grant the landlord an order of possession **effective two (2) days after service on the tenant**. I find the tenancy ended on March 31, 2022.

The landlord is holding a security deposit of \$787.50 which was paid by the tenant and includes \$0.00 in interest since that date. As the landlord has succeeded with their application, I award the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act. I authorize the landlord to retain \$100.00 in full satisfaction of the filing fee from the \$787.50 security deposit and pursuant to section 62(3) of the Act, I find the security deposit is now \$687.50 effective immediately.

Conclusion

The monetary claim is dismissed due to a service issue.

The landlord's claim for an order of possession is successful. The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended March 31, 2022. I authorize the landlord to retain \$100.00 in full satisfaction of the filing fee from the \$787.50 security deposit and pursuant to section 62(3) of the Act and I find the security deposit is now \$687.50 effective immediately.

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: June 17, 2022

Residential Tenancy Branch