



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The landlord applied on February 22, 2022, for an order of possession of the rental unit based upon the tenant's written notice and recovery of the cost of the filing fee.

The landlord and his son/representative attended the hearing; the tenants did not attend or file written evidence for the hearing.

The landlord's son (agent) represented his father at the hearing and provided their affirmed testimony. The agent testified that they served the tenants with their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by personal delivery on March 4, 2022. The landlord submitted documentary evidence containing the tenant MB's signature acknowledging receipt of the application package.

Based upon the submissions of the landlord, I find the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

As noted above, the landlord applied for an order of possession of the rental unit based upon an alleged tenant's written notice to end the tenancy. The evidence shows that the application should have requested an order of possession based upon the landlord's One Month Notice to End Tenancy for Cause (1 Month Notice) served to the tenants.

I find the landlord's made an inadvertent error in their application marking the incorrect issue. However, I find it is not prejudicial to the tenants to amend the landlord's application to seek the order of possession pursuant to the 1 Month Notice. This is because the application package containing the landlord's evidence served upon the tenants clearly show the evidence related to the 1 Month Notice.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence shows that this tenancy began on March 1, 2020. The rental unit is in the basement of a home owned and occupied by the landlord on the upper floor.

The agent submitted evidence that they served the tenant the Notice by personal service to tenant MB at 7:42 pm on November 30, 2021. The Notice was dated November 30, 2021, listed an effective end of tenancy date of December 31, 2021. The landlord filed a copy of the Notice into evidence containing MB's signature showing receipt.

The causes listed on the Notice stated that the tenant has allowed an unreasonable number of occupants in the rental unit and that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant and put the landlord's property at significant risk.

The landlord submitted the following in their application:

Hazardous hoarding and over accumulation that put the property owners and those living in the basement at risk. Basement is hoarded in such a manner, if

there is any fire/emergency /water leakage, its almost impossible to access. Water tank/main water/furnace/electric panels are fully blocked with hoarding. Even stairs are stuffed/blocked to pass through. And on hygienic aspect, basement has not been cleaned since 2 years as no space is to move around, that is causing mouldy smell in the house.

The agent submitted that the stench in the home coming from the rental unit due to the tenants' hoarding has required the landlord to block any airflow leading to the upper level. The agent testified that the tenants have refused entry to the rental unit to the electricians who have come to attend to electrical issues and that their hoarding has caused emergency exits to be blocked. The agent stated that the tenants' hoarding has led to an unsafe situation in the residential property.

The agent submitted when they have attempted to assist the tenants in recognition of possible personal issues, but the rental unit remains the same. The agent submitted that it is impossible to move around in the rental unit as pathways are blocked and a fire and safety risks continue.

Analysis

I have reviewed all the evidence and accept that the tenants were served with the Notice as declared by the landlord on November 30, 2021, which listed a move-out date of December 31, 2021.

The Notice served on the tenants sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenants did not file such an application within ten days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, December 31, 2021.

The undisputed evidence also is that the tenants failed to make an application for dispute resolution to contest the Notice.

As such, I therefore find the tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, or December 31, 2021.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the One Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

I have reviewed the landlord's undisputed evidence and find they had sufficient cause to end the tenancy based upon the condition of the rental unit and the fire and safety risks associated with the tenants' hoarding and blockage of emergency exits.

I therefore **order** the tenancy ended on December 31, 2021.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective two days after service of the order upon the tenants.

The tenants must be served the Order to be effective. If the tenants fail to voluntarily comply by vacating the rental unit immediately, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenants are cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenants.

I grant the landlord recovery of the filing fee of \$100. I authorize the landlord to deduct \$100 from the tenants' security deposit in satisfaction of their monetary award of \$100, pursuant to section 72(2)(b) of the Act.

Conclusion

The tenancy has been ordered ended on December 31, 2021.

The landlord's application for an order of possession of the rental unit is granted.

The landlord has been issued an order of possession of the rental unit, effective two days after service of the order upon the tenants.

The landlord is authorized to deduct \$100 from the tenants' security deposit in satisfaction of their monetary award for the filing fee.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 04, 2022

Residential Tenancy Branch