



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

On April 11, 2022, the Landlords 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”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was originally scheduled to commence via teleconference at 11:00 AM on August 11, 2022. However, due to technical difficulties, this hearing was re-scheduled to commence via teleconference at 9:30 AM on August 12, 2022. Records indicate that a new Notice of Dispute Resolution proceeding package was sent to all parties on August 11, 2022, at 2:00 PM, informing them of the new hearing date and time.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

Landlord J.W. attended the hearing; however, the Tenant did not attend the hearing at any point during the 26-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by email on April 24, 2022, and then by registered mail on July 7, 2022. He testified that he was not aware that he was not permitted to serve this package by email without first

having written consent where both parties confirm to communicate by specific email addresses. Thus, this package was served later by registered mail. He then stated that the Tenant confirmed that he received this package, and he referenced the signed letter submitted as documentary evidence indicating as much. Based on this undisputed evidence, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlords' One Month Notice to End Tenancy for Cause, and the other claims were dismissed with leave to reapply. The Landlords are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written 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

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a recover the filing fee?

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.

The Landlord advised that the tenancy started on September 1, 2020, that rent was established in the amount of \$1,800.00 per month, and that it was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the tenancy signed agreement was submitted as documentary evidence for consideration.

He then testified that the Notice was served to the Tenant by email on February 22, 2022. While he could not confirm that the Tenant received this Notice on that date, he referenced a text message submitted as documentary evidence indicating that the Tenant was aware of this service on that date. The reasons the Landlord served the Notice are because the “Tenant is repeatedly late paying rent” and “The Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord.”

He acknowledged that he did not include his address for service on the Notice; however, he indicated that it was provided to the Tenant on the tenancy agreement. As well, he acknowledged that this copy of the Notice submitted to the Residential Tenancy Branch was not signed; however, he testified that he did print off the Notice, that he did sign it, and that the copy he scanned and emailed to the Tenant did have his signature on it.

The effective end date of the tenancy was noted on the Notice as March 31, 2022. As well, he testified that the Tenant did not dispute the Notice.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

With respect to the Notice served to the Tenant on February 22, 2022, by email, I note that if the Landlords had included the Tenant’s incorrect email address in the February 22, 2022 text message when notifying the Tenant where the Notice was served, it would be reasonable to conclude that the Tenant would have corrected the Landlord in response. Given that there is no evidence that the Tenant took issue with the email address where the Notice was served, I am satisfied that the Tenant did receive this Notice by email.

Furthermore, while I acknowledge that the Landlords did not include an address for service on the Notice, given that the same service address was on the tenancy agreement, I am satisfied that the Tenant would have had an address for service for the Landlords had he disputed the Notice.

Finally, I acknowledge that the copy of the Notice submitted to the Residential Tenancy Branch was not signed by the Landlord. However, based on the Landlord's solemnly affirmed testimony, I am satisfied that the copy of the Notice that was served to the Tenant was signed.

As such, in reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

Based on the evidence before me, I am satisfied that the Notice was emailed to the Tenant on February 22, 2022, and pursuant to Section 44 of the *Residential Tenancy Regulation*, this Notice was deemed received on February 25, 2022. According to Section 47(4) of the *Act*, the Tenant 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 receiving the Notice, the tenth day fell on Monday March 7, 2022, and the undisputed evidence is that the Tenant did not dispute this Notice at all. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 47(5) of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession pursuant to Section 55(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Pursuant to Sections 67 and 72 of the *Act*, I allow the Landlords to retain this amount from the security deposit in satisfaction of this debt outstanding.

Conclusion

I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlords. Should the Tenant 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: August 12, 2022

Residential Tenancy Branch