



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 30, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order of possession;
- a monetary order for unpaid rent;
- a monetary order for the cost to repair damage caused by the Tenants, their pets or their guests during the tenancy;
- a monetary order for compensation for monetary loss or other money owed; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and provided a solemn affirmation at the beginning of the hearing. The Tenants did not attend the hearing.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail on September 17, 2022. Canada Post registered mail receipts which included the date and time of purchase and showed the tracking numbers were submitted in support. The Landlord testified that he saw the delivery notices at the rental address, a house. Pursuant to sections 89 and 90 of the Act, I find these documents are deemed to have been received by the Tenants on September 22, 2022.

The Landlord was given the 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Issue – Severance

Rule of Procedure 2.3 permits an arbitrator do dismiss unrelated claims with or without leave to reapply. In this case, I find the most critical issue to address is whether or not the tenancy will continue, which is unrelated to the Landlord's claims for monetary relief. Therefore, I dismiss all but the Landlord's requests for an order of possession and to recover the filing fee, with leave to reapply.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord testified the tenancy began in 2018. Currently, rent of \$1,650.00 per month is due on the first day of each month. The Landlord confirmed the Tenants paid a security deposit of \$825.00.00, which the Landlord holds.

The Landlord testified that he issued a One Month Notice to End Tenancy for Cause dated August 12, 2022 (the One Month Notice). A copy of the One Month Notice was submitted into evidence. The Landlord testified the One Month Notice was served on the Tenants by registered mail on August 2, 2022. When asked to explain the apparent discrepancy, the Landlord testified the date of the One Month Notice is an error and that the One Month Notice was actually served on August 2, 2022. Copies of Canada Post registered mail receipts were submitted in support of service on August 2, 2022. The One Month Notice is signed and dated, gives the address of the rental unit, states the effective date of the notice, states the grounds for ending the tenancy, and is in the approved form.

The Landlord testified that he is not aware of any application for dispute resolution filed by the Tenants.

Analysis

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

In this case, I find that the One Month Notice was served on the Tenants by registered mail on August 2, 2022. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received five days later. Therefore, I find the One Month Notice is deemed to have been received by the Tenants on August 7, 2022. I find the One Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 47(4) of the Act, the Tenants had until August 17, 2022, to dispute the One Month Notice by filing an application for dispute resolution. I find there is insufficient evidence before me to conclude that they did so.

Considering the above, and pursuant to section 47(5) of the Act, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the One Month Notice, which was September 30, 2022. The Tenants must vacate the rental unit. The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenants.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee. I order that this amount may be deducted from the security deposit held, leaving a balance of \$725.00.

Conclusion

The Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is entitled to recover the \$100.00 filing fee, which I order may be deducted from the security deposit held.

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: November 4, 2022

Residential Tenancy Branch