



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenants applied on July 26, 2022 for:

- an order to cancel a One Month Notice to End Tenancy For Cause, dated July 13, 2022 (the One Month Notice); and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issue(s) to be Decided

- 1) Are the tenants entitled to an order to cancel the One Month Notice?
- 2) If not, are the landlords entitled to an order of possession?
- 3) Are the tenants entitled to the filing fee?

Background and Evidence

Those present agreed on the following regarding the tenancy. It began on October 1, 2021; rent is \$2,900.00, due on the first of the month; and the tenants paid a security deposit of \$1,450.00 and a pet damage deposit of \$450.00, which the landlords still hold.

The landlord testified they served the tenants with the One Month Notice on July 13, 2022 by registered mail. The tenant testified they received the Notice on July 15, 2022. The tenants submitted their application to dispute the One Month Notice on July 26, 2022.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form. The reasons indicated for the One Month Notice are:

- the tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the landlord's property at significant risk;
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord; and
- the 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 landlord testified that the tenants have violated the landlords' lawful right to access the land surrounding the rental unit, by demanding the landlords give notice before visiting the land outside the rental unit, which is a house. The landlord testified that the main reason they served the Notice was because on July 11, another time the landlords were visiting their property, which is next door to the rental property, one of the tenants had come out of the house while nude, and confronted the landlords for 15 minutes as they conducted their business.

The tenant testified that the landlords are constantly harassing the tenants, that they frequently visit the land outside the rental unit without providing notice to the tenants, and that children visiting with the landlords had repeatedly walked over freshly planted flowerbeds. The tenant testified that he is a naturalist, and at times enjoys relaxing while nude in the privacy of home. The tenant testified that on July 11, while nude, he had heard a banging from the side of the house, went to see what was, and after seeing it was the landlords at their shed, went back inside the rental unit and got dressed.

Analysis

Based on the testimony of those present, I find the landlords served the tenant the One Month Notice on July 13, 2022, in accordance with section 88 of the Act, and that the tenants received it on July 15, 2022.

I find the One Month Notice meets the form and content requirements of section 52 of the Act.

The tenant testified they received the One Month Notice on July 15, 2022. The tenants' application to cancel the One Month Notice was received by the Residential Tenancy Branch on July 26, 2022, 11 days later. Section 47(4) of the Act states that a tenant who wishes to dispute a One Month Notice must do so within 10 days after receipt. Pursuant to section 47(5) of the Act, failure to dispute a One Month Notice within 10 days after receipt results in the conclusive presumption that the tenant has accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Therefore, I find that the tenants' application was made late, contrary to section 47(4) of the Act, and that the tenants are conclusively presumed to have accepted that the tenancy ended on August 31, 2022, the effective date of the Notice.

I find the landlord is entitled to an order of possession.

As the tenants still reside in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, December 16, 2022.

As the tenants are unsuccessful in their application, I decline to award the filing fee.

Conclusion

The tenants' application is dismissed.

The landlords are granted an order of possession which will be effective December 31, 2022, at 1:00 p.m. The order of possession must be served on the tenants. The order of possession 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: December 19, 2022

Residential Tenancy Branch