



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated August 31, 2022 (1 Month Notice) and to recover the cost of the filing fee.

Agent, EF and senior manager of housing, SH (agents) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated October 5, 2022 (Notice of Hearing), the application and documentary evidence (Hearing Packages) were considered. The agents provided affirmed testimony that the Hearing Packages were served on the tenants by with a separate registered mail envelope to each tenant and in support, two registered mail tracking numbers were provided in evidence. The tracking numbers have been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking website, both packages were mailed on October 6, 2022 and were both successfully delivered on October 11, 2022. Based on the above and without any evidence to prove to the contrary I am satisfied that the tenants were both served as of October 11, 2022, the date that both Hearing Packages were successfully delivered by registered mail to both tenants.

The agents confirmed that the tenant continue to occupy the rental unit, which is were they were served with the Hearing Packages.

Issues to be Decided

- Is the landlord entitled to an order of possession for cause under the Act?
- If yes, is the landlord entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement were submitted in evidence. The tenancy began on February 2, 2021. The landlord confirmed service of the 1 Month Notice by posting to the tenants' door on August 31, 2022, which was witnessed by third party, DH. There is a photo supporting this and states that there is time sensitive and important information contained in the package and has a smartphone showing with the date of August 31, 2022.

The 1 Month Notice has an effective vacancy date of September 30, 2022, which has passed. The tenants did not file to dispute the 1 Month Notice. Both tenants continue to occupy the rental unit. A copy of the 1 Month Notice was submitted in evidence. The landlord is seeking an Order of Possession and if they are entitled to it, the recovery of the cost of the filling fee pursuant to section 72 with the amount being deducted from the security deposit of \$187.50.

The causes and details listed on the 1 Month Notice are as follows:

- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
- ☒ significantly interfered with or unreasonably disturbed another occupant or the landlord.
 - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
 - ☒ put the landlord's property at significant risk

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

Daniel W assaulted another tenant on July 30th 2022.
 Daniel W and Megan F neglected to clean up after their dogs in common areas of the building on several occasions, despite several verbal and written requests to do so.
 Daniel W triggered the third floor sprinkler system by smoking in the hallway, causing significant damaged to other tenants units on December 10, 2021.
 Daniel W triggered the buildings fire alarm on several occasions, by smoking.

The agents confirmed that on July 30, 2022, tenant DW assaulted another tenant, JA who was injured according to the agents. In addition, DW has set off the building fire

alarm and the sprinkler system, the latter of which caused significant damage on December 10, 2021.

The agents confirmed that the tenants have paid for use and occupancy for February 2023.

The agent stated that although the 1 Month Notice submitted in evidence was not signed, the original version was because it was printed from a PDF document and signed by the agent before being served on the tenants.

Analysis

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

Order of possession - I find that the tenants were deemed served with the 1 Month Notice on September 3, 2022, which is three days after the 1 Month Notice was posted to the tenants' door on August 31, 2022. Pursuant to section 90 of the Act, documents posted to the door are deemed served 3 days later. The tenants did not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice. Pursuant to section 47 of the Act, the tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date of the 1 Month Notice which automatically corrects under section 53 of the Act to October 31, 2022.

I find the 1 Month Notice complies with section 52 of the Act, based on the documentary evidence and testimony before me, which was undisputed.

The tenants continue to occupy the rental unit. Pursuant to section 55 of the Act, I grant the landlord an order of possession **effective February 28, 2023 at 1:00 p.m.** and which must be served on the tenants. I find the tenancy ended on October 31, 2022. The tenants have been over-holding the rental unit since that date.

Pursuant to section 72 of the Act, as the landlord's application was successful, I grant the landlord **\$100** for the recovery of the cost of the filing fee. **I authorize** the landlord to retain \$100 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. Pursuant to section 62(3) of the Act, I find the tenant's security deposit before interest is now **\$87.50**, effective immediately.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective February 28, 2023 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee. The security deposit balance before interest is now \$87.50.

This decision will be emailed to the landlord and sent by regular mail to the tenants.

The order of possession will be emailed to the landlord for service on the tenants. The tenants are cautioned that they can be held liable for all costs related to the enforcement of the order of possession including, but not limited to, court costs and bailiff fees.

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: February 7, 2023

Residential Tenancy Branch