



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNYSHORE BARCLAY HOLDING LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on September 16, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based on a One Month Notice for Cause dated July 21, 2022 (the "One Month Notice") and;
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00AM on February 2, 2023 as a teleconference hearing. K.C. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenants. The conference call line remained open and was monitored for 18 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that K.C. and I were the only persons who had called into this teleconference.

K.C. testified the Application and documentary evidence package was served to each Tenant by registered mail on October 1, 2022. K.C. provided the tracking information during the hearing, which has been recorded on the cover page of this decision. Based on the oral submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on October 6, 2022, the fifth day after the registered mailings.

K.C. was given an 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. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on a One Month Notice for Cause, pursuant to Section 47 and 55 of the *Act*?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

K.C. testified that the tenancy began on July 1, 2021. Currently rent in the amount of \$1,624.00 is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 which the Landlord continues to hold. The Landlord submitted a copy of the tenancy agreement in support.

K.C. testified that the Tenants have not maintained reasonable health, cleanliness and sanitary standards throughout the rental unit. K.C. stated that there are thousands of cockroaches in the Tenants' rental unit. K.C. stated that the Landlord has arranged for monthly cockroach extermination treatments, however, these have not been effective given the Tenants refuse to clean their rental unit. The Landlord provided a copy of a pest control report which indicates;

"Please clean/remove debris accumulation to eliminate pest harbourage.:Poor sanitation inside unit 209. This unit had high levels of cockroaches."

The Landlord provided a copy of two caution letters addressed to the Tenants, following the pest control inspection, requesting that the Tenants clean and remove debris, and remove food debris accumulation.

K.C. stated that the Tenants have not yet complied with the Landlord's numerous requests for the Tenants to clean their rental unit to properly eliminate the presence of cockroaches in the rental unit.

K.C. stated that the Landlord subsequently served the Tenants with a One Month Notice for Cause by posting it to the Tenants' door on July 22, 2022. The Landlord provided a proof of service in support. K.C. stated that the Tenants have not disputed the notice

and have not vacated the rental unit according to the effective date of August 31, 2022. The Landlord is therefore seeking an order of possession as well as for the return of the filing fee.

Analysis

Based on the uncontested documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause.

According to Section 32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

- (a)complies with the health, safety and housing standards required by law, and
- (b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4)A tenant is not required to make repairs for reasonable wear and tear.

(5)A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Landlord served the Tenants with a One Month Notice by posting it to the door of the rental unit on July 22, 2022. Based on the oral and written submissions of the Landlord, and in accordance with sections 88 and 90 of the Act, I find that the Tenants are deemed to have been served with the One Month Notice on July 25, 2022 the third day after it was posted to the Tenants door.

Section 47(4) of the Act states that a Tenant may dispute a Notice by making an Application for Dispute Resolution within 10 days after the date the Tenant receives the Notice. Section 47(5) of the Act states that if a Tenant who has received a Notice 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.

As I have found that the One Month Notice was deemed served to the Tenants on July 25, 2022 and that there is no evidence before me that the Tenants applied for Dispute Resolution within 10 days or applied for more time to cancel the Notice, I find that the Tenants are conclusively presumed to have accepted the end of her tenancy on August 31, 2022.

I further find that the Landlord has provided sufficient evidence to demonstrate that they have sufficient cause to end the tenancy. I find that the Landlord is entitled to a two-day Order of Possession which must be served on the Tenants. If the Tenants do not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

As the Landlord was successful with their Application seeking an order of possession for cause, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application which they may deduct from the Tenants' security deposit.

Conclusion

The Tenants are conclusively presumed to have accepted the end of the tenancy for cause. Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. Should the Tenants 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: February 02, 2023

Residential Tenancy Branch