



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, OPU, MND, MNR, FF

Introduction

This hearing was scheduled as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice/1 Month Notice) served to the tenants, compensation for alleged damage to the rental unit by the tenants, and recovery of the cost of the filing fee.

The landlord amended their application on or about February 11, 2023, seeking a monetary order for unpaid rent, an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants, and increasing their monetary claim for alleged damages from \$4,800 to \$12,955.51.

The landlord, the tenants, and the tenant's legal counsel (counsel) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord submitted that their original Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was served to the tenants attaching the documents to the tenants' door.

When the landlord amended their application to increase the claim for alleged damage by the tenants, to request an order of possession of the rental unit pursuant to a 10 Day Notice, and to add a further monetary claim for unpaid rent and utilities, the amendment was processed by the RTB on February 13, 2023. The landlord submitted they served the amendment to the tenants by attaching it to the tenants' door. At the earliest, the amendment would be deemed to be received on February 16, 2023, 3 days after posting.

Taking into account that under the Act, an application for dispute resolution, other than a landlord's application for an order of possession of the rental unit, must be served to the respondents by registered mail or personal service, or email, if prior written approval had been allowed, I find the landlord failed to serve the tenants with their monetary claim as required by the Act.

Additionally, Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find the landlord's monetary claim is unrelated to the primary issue of whether the tenancy ends or continues. For this reason, I sever the landlord's monetary claims from this application and **dismiss** those claims, **with leave to reapply**.

Leave to reapply does not extend any applicable time limitation periods.

The tenant's counsel submitted they had just been retained the day prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit pursuant to the 1 Month Notice and recovery of the cost of the filing fee?

Background and Evidence

The written tenancy agreement indicates that the tenancy began on April 28, 2019, current monthly rent is \$1,421 and the tenants paid a security deposit of \$700. Filed in evidence was a copy of the written tenancy agreement.

The landlord submitted evidence that the tenants were served the 1 Month Notice by attaching it to the tenant's door on September 25, 2022. The 1 Month Notice was dated September 25, 2022 and listed an effective end of tenancy date of October 30, 2022. The causes listed on the 1 Month Notice are:

1. Tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
3. Tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.
4. Tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk.
5. Tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.
6. Tenant has not done required repairs of damage to the rental unit or other residential property, within a reasonable time.
7. Tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The landlord submitted that the tenants have paid the monthly rent late 12 times in the past year.

Tenant's response-

The tenant, RP, confirmed receiving the Notice and not filing an application for dispute resolution to dispute the 1 Month Notice. The tenant also asserted that they paid the monthly rent according to the times they were paid from their employer.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

I find the landlord submitted sufficient evidence to prove the tenants were served with the Notice as declared by the landlord on September 25, 2022, by attaching it to the tenants' door, which listed an effective move-out date of October 30, 2022. I find the effective date is automatically corrected under the Act to October 31, 2022.

The Notice served on the tenants sets out that the tenants had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenants did not file such an application within ten days, then the tenants are conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the corrected effective date of the Notice, in this case, October 31, 2022.

The tenants confirmed receiving the 1 Month Notice and not filing an application in dispute.

I therefore find the tenants are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, or October 31, 2022.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act and was on the approved form with content meeting the statutory requirements under section 52 the Act.

I have reviewed the landlord's evidence and find they had sufficient cause to end the tenancy based upon at least one of the reasons listed.

I therefore **order** the tenancy ended on October 31, 2022.

I find the landlord is entitled to and I **grant an order of possession of the rental unit (Order)**, pursuant to section 55(2)(b) of the Act, effective two days after service of the order upon the tenants.

The tenants must be served the Order under any method approved by section 88 of the Act to be effective. If the tenants fail to voluntarily comply by vacating the rental unit immediately, the Order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it becomes necessary.

The tenants are cautioned that costs of such enforcement, **such as bailiff costs and filing fees**, are recoverable from the tenants.

I grant the landlord recovery of the filing fee of \$100. I grant the landlord a monetary order in the amount of \$100. The monetary order must be served to the tenants to be enforceable. In the alternative, I authorize the landlord to deduct \$100 from the tenants' security deposit in satisfaction of their monetary award of \$100, pursuant to section 72(2)(b) of the Act. If the landlord deducts \$100 from the tenant's security deposit, the monetary order is cancelled and is of no force or effect.

As I granted the landlord an order of possession based upon the 1 Month Notice, I did not consider the landlord's request for an order based upon the undisputed 10 Day Notice.

Conclusion

The tenancy has been ordered ended on October 31, 2022.

The landlord's application for an order of possession of the rental unit effective two days after service on the tenants is granted.

The landlord is granted a monetary order in the amount of \$100 for recovery of the filing fee.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 04, 2023