



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was scheduled as a result of the landlords' application for dispute resolution (application), filed on November 9, 2022, 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 and recovery of the cost of the filing fee.

The landlord then filed another application on January 24, 2023, seeking an order of possession pursuant to another 1 Month Notice served to the tenants, for a different cause, and recovery of the filing fee. The landlords' second application was scheduled to be heard on the same day and was listed as a repeat application.

The landlords, the landlord's agent (agent) and the tenants 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. The tenants confirmed receipt of the landlords' application which contained their evidence.

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.

Issue(s) to be Decided

Are the landlords 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 March 1, 2021, for a monthly rent of \$1,400 and a security deposit of \$700 being paid by the tenants. 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 personal service on July 18, 2022. The 1 Month Notice was dated July 18, 2022 and listed an effective end of tenancy date of August 30, 2022. The cause listed on the 1 Month Notice is:

1. Tenant is repeatedly late paying rent.

The landlords submitted that the tenants have been repeatedly late in rent payments, and were being paid in installments during the month. In the Details portion of the 1 Month Notice, the landlords wrote the following:

Details of the Event(s):
- December 4th, 2021, we were given \$700, then on Dec 18, 2021 we got the remaining \$700.00
- Since September 2021, we wouldn't get full rent on time, first week we would get \$700.00, then remaining on the 3rd week.
- In January, 2022 we didn't receive rent so we gave a 10 day notice on the 8th of January 2022. And we received rent by the 16th.
- In June 2022, we were given \$700 for rent, and got the remaining on June 30, 2022

[Reproduced as written]

The agent confirmed that the payments paid by tenants were as listed on the 1 Month Notice.

During the hearing, there was an attempt to reach a mutual agreement, which was not successful. However, during this discussion, the landlords agreed to allow the tenants to remain in the rental unit until April 30, 2023, with the understanding that the tenants pay the monthly rent for April 2023.

Filed in evidence was the tenant ledger sheet, 10 Day Notices issued to the tenants for unpaid rent, and rent receipts showing the rent was paid on a use and occupancy basis.

Tenants' response-

The tenant submitted that they talked to the landlords and had a verbal agreement the rent could be paid late. Filed in evidence were the same rent receipts filed by the landlords, listing use and occupancy.

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

Analysis

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

I find the landlords submitted sufficient evidence to prove the tenants were served with the Notice as declared by the landlords on July 18, 2022, by personal service, which listed an effective move-out date of August 30, 2022. I find the effective date is automatically corrected under the Act to August 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, August 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 August 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 landlords' evidence and find they had sufficient cause to end the tenancy based on the reason listed. I find the tenancy was not reinstated by the acceptance of further rent payments, as the landlords accepted the payments on a use and occupancy basis.

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 at 1:00 pm on April 30, 2023**.

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.

The tenants are reminded of their obligation to pay all monthly rent while remaining in the rental unit.

I grant the landlords recovery of the filing fee of \$100 and are issued a monetary order in the amount of \$100. The monetary order must be served to the tenants to be enforceable. In the alternative, if they choose, I authorize the landlords 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 landlords deduct \$100 from the tenants' security deposit, the monetary order is cancelled and is of no force or effect.

As I granted the landlords an Order based upon the 1 Month Notice issued on July 18, 2022 in their original application, I did not consider the landlords' repeat application for an order of possession based upon another 1 Month Notice served to the tenants, dated November 28, 2022. As a result, I find the matters in the repeat application are now moot, and I **dismiss** that application, **without leave to reapply**.

Conclusion

The landlords' application for an order of possession of the rental unit based upon the 1 Month Notice dated July 18, 2022 is granted and the landlords have been given an Order, effective at 1:00 pm on April 30, 2023.

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 23, 2023

Residential Tenancy Branch