



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL
 CNC-MT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause (the "Notice"), pursuant to section 47; and
- more time to cancel the Notice, pursuant to section 66.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The landlord testified that the tenants were served with his application for dispute resolution and evidence in person on March 24, 2023. The tenants confirmed receipt of the landlord's application for dispute resolution and evidence. I find that the tenants were served with the landlord's application and evidence in accordance with section 88 and 89 of the *Act*.

Tenant AB testified that the landlord was served with the tenants' application for dispute resolution via e-mail but he is not sure if the landlord received it. Tenant AB did not know of what date the landlord was served. No proof of service documents were entered into evidence. Tenant AB testified that the landlord was not served with their evidence because they thought that evidence submitted to the Residential Tenancy Branch was available to the landlord. The landlord testified that he did not receive the tenants' application for dispute resolution.

Rule 3.5 of the Residential Tenancy Branch Policy Guideline states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

As no proof of service documents were entered into evidence and the landlord testified that he did not receive the tenants' application for dispute resolution, I find that the tenants have not proved, on a balance of probabilities, that the landlord was served with their application for dispute resolution. The tenants' application for dispute resolution is therefore dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

As the tenants did not serve the landlord with their evidence, the tenants' evidence is excluded from consideration.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to recover the \$100.00 filing fee?

Facts and Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on May 1, 2022,
- monthly rent in the amount of \$1,750.00 is payable on the first day of each month,
- a security deposit of \$875.00 was paid by the tenants to the landlord, and
- the tenants were late paying rent in October 2022, November 2022 and December 2022.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the landlord emailed the tenants the Notice on February 22, 2023. Tenant HM testified that she received the Notice around that time. Tenant AB testified that he received the Notice one day after it was emailed. I find, on a balance of probabilities that the tenants received the Notice by February 23, 2022 and were therefore sufficiently served with the Notice for the purposes of this *Act*, pursuant to section 71 of the *Act*.

The Notice was entered into evidence, is signed by the landlord, is dated February 22, 2023, gives the address of the rental unit, states that the effective date of the Notice is March 31, 2022, is in the approved form, #RTB-33, and states the following grounds for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - 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.
- 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;

Upon review of the Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

The tenants filed to dispute the Notice on March 20, 2023, 25 days after it was received.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, 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.

The tenants did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being March 31, 2023. Pursuant to section 55 of the *Act*, I find that the landlord is entitled to a two day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit in accordance with the Order of Possession, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

I also note that both parties agreed that the tenants were late paying rent for October, November and December of 2022. I find that had the tenants filed to dispute the Notice on time, the landlord would still be entitled to an Order of possession for repeated failure to pay rent.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

The landlord is entitled to retain \$100.00 from the tenants' security deposit.

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: May 29, 2023

Residential Tenancy Branch