



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC
 OPL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for an order cancelling a One Month Notice to End Tenancy for Cause. The landlords have applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The tenant attended the hearing with a support person, who observed only and did not take part in the hearing. An agent for the landlords also attended.

The tenant and the landlords' agent each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that the landlords have provided all evidence to the tenant, but the tenant has not provided any evidence to the landlords, indicating that the tenant was not aware that evidence had to be exchanged. Any evidence that a party wishes to rely on must be provided to the other party. Since the tenant has not done so, I decline to consider any of the tenant's evidentiary material. All evidence of the landlords has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the One Month Notice to End Tenancy for Cause dated March 17, 2023 was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlords' agent testified that this fixed-term tenancy began on February 4, 2023 and expires after February 4, 2024 and then reverts to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$1,900.00 is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$1,900.00, not knowing that only half a month's rent can be collected. The security deposit of \$1,900.00 is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a townhouse, and the landlords do not live on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlords' agent further testified that on March 17, 2023 the tenant was served with a One Month Notice to End Tenancy for Cause by registered mail. A copy has been provided for this hearing and it is dated March 17, 2023 and contains an effective date of vacancy of April 30, 2023. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site/property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The landlords have also provided a Canada Post Registered Domestic Customer Receipt addressed to the tenant at the rental unit address and a Canada Post cash register receipt dated March 17, 2023 containing the tracking number.

The tenant has moved in another occupant without the landlord's consent. There have been strata complaints and no Form K has been provided to the strata for the occupant.

The landlord texted the tenant about another person occupying the rental unit. The tenant has continued to reside there as well.

The tenant continues to ask for extra fobs, indicating a risk.

If the landlords are successful with the application, the landlords would be content with an effective date of vacancy of June 30, 2023.

The tenant testified that she received a One Month Notice to End Tenancy for Cause dated February 8, 2023 with an effective date of vacancy of March 8, 2023 but it doesn't indicate any reasons for ending the tenancy. The tenant did not receive one dated March 17, 2023.

The tenant gave the landlord a copy of the occupant's identification so they could put it on the lease, but instead added a paragraph to the tenancy agreement. The landlord agreed to put the occupant on the lease but didn't, and then arrived in person and handed the Notice to the tenant.

The tenant also testified that any complaints from the strata will be paid by the tenant. However, the tenant only ever received 1 fob from the building manager, not the landlords, and the tenant paid for it.

Analysis

The *Residential Tenancy Act* specifies that documents served by registered mail are deemed to have been served 5 days after mailing. The tenant testified that the One Month Notice to End Tenancy for Cause dated March 17, 2023 was not received, but the landlords have provided proof of service by registered mail at the address of the rental unit.

The *Act* also states that once served the tenant has 10 days to dispute the notice, and if the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. I find that the Notice was served on March 22, 2023, 5 days after mailing. The tenant disputed a One Month Notice to End Tenancy for Cause dated February 8, 2023. Since the landlord relies on the one dated March 17, 2023 and the tenant has not disputed it, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. The landlords' agent advised that the landlords would be content with an effective date of vacancy of June 30, 2023. Therefore, I grant the Order of Possession effective at 1:00 p.m. on that date. The tenant must be served with the order, which may be filed for enforcement in the Supreme Court of British Columbia.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$100.00 filing fee. I order that the landlords be permitted to keep that amount from the security deposit held in trust.

The tenant's application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on June 30, 2023.

I hereby order the landlord to keep \$100.00 of the security deposit as full recovery of the filing fee.

This order is final and binding and may be enforced.

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: June 07, 2023

Residential Tenancy Branch