



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

On April 19, 2023, the Landlords applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 27, 2023, this hearing was scheduled to commence via teleconference at 11:00 AM on August 1, 2023.

Both Landlords attended the hearing; however, neither Tenant attended the hearing at any point during the 27-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

Landlord L.C. advised that they served the Notice of Hearing and evidence package Tenant R.L. by email on April 30, 2023, based on the Tenant’s email on April 20, 2023, confirming that email can be used for service of documents. He acknowledged that he did not have permission to serve the Notice of Hearing and evidence package to R.L. by email via a Substituted Service Decision. As well, he testified that this email did not come back to them as undeliverable, and that they received multiple emails from R.L.

after this from that same email address. He also stated that this package was not served to Tenant L.L. despite being required to serve her this package as well, in accordance with Rule 3.1 of the Rules of Procedure (the “Rules”).

While the Landlords did not have permission to serve this Notice of Hearing and evidence package to R.L. by email via a Substituted Service Decision, based on the evidence before me, I am satisfied that R.L. confirmed that service of documents may be served in this manner. As such, I find that R.L. has been duly served the Landlords’ Notice of Hearing and evidence package. As such, I have accepted the Landlords’ documentary evidence and will consider it when rendering this Decision.

However, as L.L. was not served this package, her name has been removed from the Style of Cause on the first page of this Decision.

During the hearing, I advised the Landlords that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other and that I have the discretion to sever and dismiss unrelated claims. As such, I advised the parties that this hearing would primarily address the Landlords’ Notice, that their claims for monetary compensation would be dismissed, and that they are at liberty to apply for these under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

L.C. advised that the tenancy started on March 1, 2007, that the rent was currently established in the amount of \$890.00 per month, and that it was due on the first day of each month. He stated that a security deposit of \$350.00 was also paid. As well, he noted that L.L. had allegedly moved out of the rental unit in June 2023. A copy of a signed tenancy signed agreement was not submitted as documentary evidence for consideration as the Landlords did not create one in accordance with the *Act*.

L.C. then testified that the Notice was served to the Tenants by registered mail on March 26, 2023, and he referenced a proof of service form submitted as documentary evidence to corroborate this (the registered tracking number is noted on the first page of this Decision). As well, they submitted a copy of the registered mail tracking history indicating that R.L. signed for this package on March 30, 2023.

The reasons the Landlords served the Notice are because of the following:

- The Tenants are repeatedly late paying rent.
- The Tenants or a person permitted on the residential property by the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlords of the residential property and/or put the Landlords' property at significant risk.
- The Tenants have not complied with an Order of the director within 30 days of the later of the date the Tenants received the Order, or the date specified in the Order for the Tenants to comply with the Order.
- The Tenants have assigned or sublet the rental unit without first obtaining the Landlords' written consent.

The effective end date of the tenancy was noted as April 30, 2023, on the Notice. L.C. testified that he signed the Notice prior to serving it to the Tenants, despite the copy of the Notice, that the Landlords uploaded for consideration, not being signed. As well, he advised that the Tenants never did make an Application to dispute the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. In reviewing this Notice, based on L.C.'s solemnly affirmed testimony that he signed a copy of this Notice prior to serving it to the Tenants, I am satisfied that the Notice meets all of the requirements of Section 52, and I find that it is a valid Notice.

Based on the undisputed evidence before me, I am satisfied that the Notice was served by registered mail on March 26, 2023, and this Notice was signed for by R.L. on March 30, 2023. According to Section 47(4) of the *Act*, the Tenants had 10 days to dispute this Notice, and Section 44(5) of the *Act* states that *"If a tenant who has received a notice under this section 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."*

After receiving the Notice, the tenth day fell on Sunday April 9, 2023, and Monday April 10, 2023, was a statutory holiday. However, the undisputed evidence is that the Tenants did not dispute this Notice by Tuesday April 11, 2023, nor is there any evidence that they disputed the Notice at all. I find it important to note that the information with respect to the Tenants' right to dispute the Notice is provided on the first and third page of the Notice.

Ultimately, as the Tenants did not dispute the Notice, I am satisfied that the Tenants were conclusively presumed to have accepted the Notice, pursuant to Section 47(5) of the *Act*. As such, I find that the Landlords are entitled to an Order of Possession pursuant to Section 55(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenants.

As the Landlords were successful in this Application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, the Landlords are permitted to withhold this amount from the security deposit to satisfy this debt.

Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective **two**

days after service of this Order on the Tenants. This Order must be served on the Tenants by the Landlords. 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: August 1, 2023

Residential Tenancy Branch