



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FFL
For the tenants: CNR FFT

Introduction

This hearing was convened as a result of the Applications for Dispute Resolution (“applications”) from both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated August 28, 2018 (“1 Month Notice”) and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”). The 10 Day Notice was not submitted in evidence to determine the date it was signed.

Two agents for the landlord (“landlord agents”), the tenants, an agent for the tenant’s legal counsel (“tenants’ agent”) and a translator for the tenants attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the landlord agents, the tenants and the tenants’ agent gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The tenants confirmed that they received the documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. While the landlord agents denied receiving documentary evidence from the tenants, I do not find it necessary to address that evidence in this decision as none of that evidence served on

the RTB was relevant to the 1 Month Notice that the tenants confirmed was not disputed.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the tenancy end based on an undisputed 1 Month Notice?
- If not, should the 10 Day Notice be cancelled or upheld?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 3, 2017 and reverted to a month to month tenancy after six months. The monthly rent was originally \$1,050.00 per month and was due on the first day of each month. The current monthly rent the parties agreed was \$1,092.00 per month. The tenants paid a security deposit of \$525.00 at the start of the tenancy which the landlord continues to hold.

Regarding the 1 Month Notice, the tenants confirmed being served with the 1 Month Notice on August 29, 2018 which is the same date the 1 Month Notice was dated. The tenants confirmed that they did not formally dispute the 1 Month Notice as they had a previous hearing regarding a different 1 Month Notice and felt that they would not have to dispute another 1 Month Notice. The tenants continue to occupy the rental unit. The agents denied that the 1 Month Notice was ever mutually withdrawn by the parties and the agents denied that they advised the tenants that the tenancy would not end based on the 1 Month Notice.

The landlord alleged four causes in the 1 Month Notice and the parties agreed that money for use and occupancy has been paid by the tenants for November 2018. The 1 Month Notice is signed and dated and includes an effective vacancy date of September 30, 2018.

The parties were advised that the tenancy ended on September 30, 2018 due to the tenants making the decision not to dispute the 1 Month Notice which I will address further below. As a result, I find it was not necessary to consider the 10 Day Notice as the tenancy ended based on the undisputed 1 Month Notice.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

1 Month Notice – Pursuant to section 47 of the *Act*, if the tenants do not dispute the 1 Month Notice within 10 days of being served, the tenants are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date listed on the 1 Month Notice which was September 30, 2018. As the tenants did not dispute the 1 Month Notice, I dismiss the tenants' application to dispute a 10 Day Notice as I find that such an application is now moot as the tenancy ended based on the undisputed 1 Month Notice before me. Therefore, I dismiss the tenants' application without leave to reapply as it is now moot. I find the tenancy ended on September 30, 2018 as indicated above.

Given the above, section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

- (a) **the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and**
- (b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result of the above and taking into account that I find the 1 Month Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **November 30, 2018 at 1:00 p.m.** as the tenants continue to occupy the rental unit and have paid for use and occupancy for November 2018.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee which was paid. I authorize the landlord to retain **\$100.00** from the tenants' \$525.00 security deposit, in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. I find that the tenants' security deposit balance is now **\$425.00** as a result of the above effective immediately.

Conclusion

The landlord's application is fully successful.

The tenants' application is dismissed in full without leave to reapply as it is moot as indicated above.

The tenancy ended based on an undisputed 1 Month Notice. The tenancy ended on September 30, 2018. The landlord has been granted an order of possession effective November 30, 2018 at 1:00 p.m. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has been granted the recovery of the cost of the \$100.00 filing fee pursuant to section 72 of the *Act*. The landlord has been authorized to retain \$100.00 from the tenants' \$525.00 security deposit, in full satisfaction of the recovery of the cost of the filing fee. The tenants' security deposit balance is now \$425.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2018

Residential Tenancy Branch