



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”) and for the recovery of the filing paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenants during the approximately 14 minutes that the phone line was open. The Landlord was affirmed to be truthful in her testimony and stated that both Tenants were served with the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by registered mail.

The Landlord provided the registered mail tracking numbers and they are included on the front page of this decision. Entering the tracking numbers on the Canada Post website confirms that both packages were delivered on April 23, 2019. As such, I find that both Tenants were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a One Month Notice to End Tenancy for Cause?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The tenancy began on February 1, 2016. Current rent is \$850.00, due on the first day of each month. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord. Although the tenancy agreement does not include a security deposit amount, the Landlord testified that the Tenants paid \$400.00 as a security deposit at the start of the tenancy.

The Landlord stated that the Tenants were served in person with a One Month Notice on February 4, 2019. The Landlord noted that she attempted to post the notice on the door but one of the Tenants opened the door and therefore received the notice in person. The Landlord submitted a proof of service form signed by a witness which confirms service to the Tenants in person on February 4, 2019.

The One Month Notice, dated February 4, 2019, was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenancy 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

The Landlord provided further details on the notice as follows:

Traffic all hours of the night. [Another tenant] moved out because of this.

The Landlord testified that she did not receive notification that the Tenants had applied to dispute the notice. She also stated that the Tenants have not paid rent and currently owe over \$2,000.00 in outstanding rent.

The Landlord submitted into evidence a previous decision and Order of Possession dated July 4, 2017. The Order of Possession was based on a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord stated that the Order of Possession was not enforced at that time as the manager had passed away. Therefore, the tenancy was not ended and continued despite receipt of the Order of Possession.

Analysis

I accept the Landlord's testimony regarding the previous Order of Possession dated July 4, 2017 and find that this Order was not served or enforced and therefore the tenancy continued after this date.

I also accept the evidence before me that the Tenants were served with a One Month Notice on February 4, 2019. This notice was served pursuant to Sections 47(1)(b), 47(1)(c) and 47(1)(e)(ii) of the *Act*.

As stated in Section 47(4) of the *Act*, a tenant has 10 days in which to dispute a One Month Notice. I accept the undisputed testimony of the Landlord that she did not receive notification that the Tenants had disputed the notice and I find no evidence before me that they did.

Therefore, I find that Section 47(5) of the *Act* applies as follows:

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Upon review of the One Month Notice dated February 4, 2019, I find the form and content to be in compliance with Section 52 of the *Act*. Therefore, I find that the Landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*.

Accordingly, I award the Landlord a two-day Order of Possession. As the Landlord was successful with their application, pursuant to Section 72 of the *Act*, I award the Landlord the recovery of the filing fee in the amount of \$100.00. The Landlord may withhold \$100.00 from the security deposit as satisfaction of this fee.

Conclusion

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** 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.

Pursuant to Section 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit to recover the filing fee paid for the Application for Dispute Resolution.

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 28, 2019

Residential Tenancy Branch