



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

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

- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent (the agent) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent gave sworn testimony that they posted the 1 Month Notice on the tenants' door on June 26, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with this Notice on the third day after it's posting on their door. The agent provided sworn testimony and written evidence that they sent both tenants copies of the landlord's dispute resolution hearing package and written evidence by registered mail on September 10, 2019. The agent provided the Canada Post Tracking Numbers and Customer Receipts to confirm these registered mailings. The agent testified that the package sent to Tenant LAJ was returned by Canada Post as unclaimed. The agent testified that Canada Post's Online Tracking System revealed that the package sent to Tenant NIAJ was successfully delivered to that tenant on September 14, 2019. On this basis, I find that the tenants were deemed served with

this material in accordance with sections 88, 89 and 90 of the *Act* on September 15, 2019, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The agent provided undisputed sworn testimony supported by written evidence that this tenancy began by way of a written Residential Tenancy Agreement (the Agreement) that was to cover the fixed term from October 1, 2016 until May 31, 2017. When the fixed term expired, the tenancy continued as a month-to-month tenancy. The agent testified that as of October 1, 2018, the monthly rent had increased to \$1,015.00, payable in advance on the first of each month. The landlord continues to hold the \$490.00 security deposit paid to the landlord when this tenancy began.

Although the agent was not certain, the agent believed that payments had been accepted by the landlord for the month of November 2019. This would enable the tenants to remain in the rental unit until at least the end of November, but not to extend this tenancy beyond the corrected effective date of the 1 Month Notice, July 31, 2019.

The landlord's 1 Month Notice identified the following reasons for ending this tenancy for cause:

Tenant has allowed an unreasonable number of occupants in the unit/site

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;*

Tenant has not done required repairs of damage to the unit/site.

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 without landlord's written consent.

The agent provided written evidence and sworn testimony that the tenants have contravened their Agreement for all of the above reasons, in particular for smoking in a non-smoking rental unit, for keeping a pet on the premises, for not repairing damage to the rental unit, and for subletting a portion of the rental unit to someone else. The agent testified that the tenants have not applied for dispute resolution to seek the cancellation of the 1 Month Notice.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, July 31, 2019.

Section 47(3) of the *Act* requires that “a notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I am satisfied that the landlord's 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on November 31, 2019, the last day for which the agent maintained that the landlord has accepted payments from the tenants enabling the tenants to remain in occupation of the rental unit. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit by the time required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Since the landlord has been successful in this application, I allow the landlord to recover their \$100.00 filing fee for their application from the tenants.

Conclusion

I allow the landlord's application to end this tenancy. The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on November 30, 2019. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Since the landlord has been successful in this application, I allow the landlord to recover their \$100.00 filing fee from the tenants. In order to implement this monetary award, I order the landlord to retain \$100.00 from the \$490.00 security deposit for this tenancy. The value of the remaining security deposit for this tenancy is hereby reduced to \$390.00.

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: November 12, 2019

Residential Tenancy Branch