



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Resilient Management Services
Ltd and [tenant name suppressed to protect privacy]

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 pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

While the landlord's agent DM ("landlord") and witness attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed 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 online teleconference system that the landlord's agent, witness, and I were the only ones who had called into this teleconference.

The landlord's agent gave sworn testimony that on January 12, 2021 the tenants were sent a copy of the Application for Dispute Resolution hearing package by way of Registered Mail. The tracking numbers were provided in the landlord's evidentiary materials. Pursuant to sections 88, 89 and 90 of the *Act*, I find the tenants deemed served with the dispute resolution hearing package on January 17, 2021, 5 days after mailing.

The landlord's agent provided undisputed testimony that the tenants were served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice'), with an effective date of January 31, 2021 on December 22, 2020 by way of registered mail. The landlord provided tracking numbers in their evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the landlord's 1 Month Notice on December 27, 2020, five days after its mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent provided undisputed testimony that this month to month tenancy began on May 20, 2020. The current rental amount is \$5,500.00, due on the first of each month. The landlord currently holds a security deposit in the amount of \$2,750.00, and the tenants continue to reside in the rental unit.

The landlord served the tenants with the notice to end tenancy on the following grounds:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord served the tenants with the 1 Month Notice on December 22, 2020 after the tenants were sent at least 5 infraction letters for noise and other bylaw infractions. The landlord submitted copies of these letters in their evidentiary materials. TP testified in the hearing that the tenants continue to cause excessive noise after being served with the 1 Month Notice, resulting in further bylaw infraction notices and fines. The landlord's agent and witness testified that the tenants have caused a significance disturbance to others in the building, and continue to do so despite the repeated warnings and the 1 Month Notice.

The landlord is seeking an Order of Possession for Cause, and recovery of the filing fee.

Analysis

I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

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 conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, January 31, 2021.

In this case, this required the tenants and anyone on the premises to vacate the premises by January 31, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

As the landlord was successful in their application, I also allow the landlord to recover the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$2,750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary order

Conclusion

I find that the landlord's 1 Month Notice is valid and effective as of January 31, 2021. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). 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.

I allow the landlord to recover the filing fee for this application. I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary claim.

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: April 9, 2021

Residential Tenancy Branch