



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding COLUMBIA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC FFT

Introduction

This dispute relates to the tenants' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Cancel a 1 Month Notice to End Tenancy for Cause dated November 21, 2022 (1 Month Notice),
2. Filing fee of \$100.

An agent of the landlord (agent) attended the teleconference hearing. The hearing was by telephone conference call and began promptly as scheduled at 9:30 a.m. Pacific Time on Monday, April 11, 2023 as per the Notice of a Dispute Resolution Hearing provided to the tenant dated December 5, 2022. The line remained open while the phone system was monitored for 11 minutes and the only participant who called into the hearing during this time was the agent. I called into the hearing at 9:31 a.m. to allow all parties to hear the introductory message. I could see that the agent had called in prior to the 9:30 a.m. start time and was on the call the entire time. No other party joined the hearing, which ended at 9:42 a.m. after 11 minutes.

Preliminary and Procedural Matters

The agent confirmed the email addresses for both parties. The decision will be sent by email to both parties.

The agent testified that they served their documentary on each tenant by registered mail. For tenant SN-F, the tracking number was RN 229 509 166 CA. The Canada Post registered mail tracking website shows that the tenant signed for and accepted the registered mail package on January 3, 2023. For tenant JW, the tracking number was RN 229 509 152 CA. The Canada Post registered mail tracking website shows that the

package was mailed to the tenant on December 22, 2022 and that the tenant failed to pick up the package and it was eventually marked as "returned to sender" as it was unclaimed. Section 90 of the Act stated that packages mailed via registered mail are deemed served 5 days after they are mailed. Therefore, I find tenant JW was deemed served as of December 27, 2022.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenants and the hearing continued without the tenants present.

Issues to Determine

1. Should the 1 Month Notice be cancelled?
2. If not, is the landlord entitled to an order of possession?
3. Should the filing fee be granted?

Background and Evidence


A copy of the 1 Month Notice was submitted in evidence and lists one cause as follows:

- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Details of Cause includes the following information:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.
Details of the Event(s): 1. Rental agreement started November 15, 2022 and states no smoking or vaping in the rental unit 2. Warning letter issued January 5, 2022 for smoking 3. Final warning letter issued March 25, 2022 for smoking 4. November 8, 2022 marijuana smell was coming from the apartment into the unit above and into the hallway.

The agent testified that they personally smelled marijuana coming from the rental unit at least a dozen times during the tenancy. The agent referred to two warning letters regarding the smell of marijuana dated January 5, 2022 and March 25, 2022 respectively. The agent also referred to section 18 of the tenancy agreement, which states:

18.  No smoking or vaping of any material is permitted within the unit.

Initial

The agent testified that the tenants were issued the 1 Month Notice for failing to stop smoking in the rental unit. The agent also confirmed the tenants continue to occupy the rental unit and paid for use and occupancy of the rental unit for April 2023. The agent requested a 2-day order of possession.

Analysis

After the 10-minute waiting period, the tenants' application was **dismissed in full, without leave to reapply**.

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.

[emphasis added]

I have reviewed the 1 Month Notice and find that it complies with section 52 of the Act.

Pursuant to section 55 of the Act, I grant the landlord an order of possession effective **April 30, 2023 at 1:00 p.m.**, which must be served on the tenants. The effective

vacancy date of the 1 Month Notice which was December 31, 2022. I find the tenancy ended on that date.

I do not grant a 2-day order of possession as money was accepted for use and occupancy of the rental unit for the month of April 2023.

As the tenants failed to attend the hearing, I consider the 1 Month Notice undisputed and I find the landlord provided sufficient evidence to support the 1 Month Notice is valid.

I decline to grant the filing fee as the tenants failed to attend the hearing.

Conclusion

The tenants' application has been dismissed in full, without leave to reapply.

The landlord has been granted an order of possession effective April 30, 2023 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on December 31, 2022.

This decision will be emailed to both parties. The order of possession will be emailed to the landlord only for service on the tenants.

Should the tenants fail to vacate the rental unit, they are reminded that they can be held liable for all costs related to enforcement of the order of possession, including but not limited to court costs and bailiff fees.

The filing fee is not granted.

This decision is final and binding on the parties, except as 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: April 11, 2023