



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MND, (MNSD), FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession, to keep the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlords served the Tenants with the Application and Notice of Hearing by registered mail on November 21, 2009. According to the Canada Post online tracking system, the Tenants received a notification card on November 24, 2009 and on December 13, 2009 the Tenants refused service of the hearing packages. The Landlord said that when the hearing packages were returned to him, he re-served them on the Tenants in person on December 20, 2009. I find that the Tenants were served as required by s. 89 of the Act and the hearing proceeded in their absence.

Issues(s) to be Decided

1. Are the Landlords entitled to end the tenancy?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

The Landlords said that the Tenants were already living in the rental unit when he purchased the rental property and took possession of it on July 31, 2009 and moved in on August 1, 2009. The Landlords said that despite their requests to the Tenants not to smoke in the rental unit due to their son's allergies, the Tenants continued to smoke and disconnected the smoke alarms. Consequently, on August 29, 2009, the Landlords said they served the Tenants in person with a One Month Notice to End Tenancy for Cause dated August 28, 2009. The Landlords said the Tenants promised a number of times that they would move out but never did so on November 20, 2009, the Landlords applied to enforce the One Month Notice.

Analysis

Section 47(4) of the Act says that a Tenant who receives a One Month Notice to End Tenancy must apply within 10 days to cancel the Notice or else they are deemed to have accepted that the tenancy will end on the effective date of the Notice and must vacate the rental unit at that time.



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Section 52 of the Act says (in part) that a Notice to End Tenancy when given by a Landlord must contain the Tenants' names. The Landlords said that they only knew the Tenants first names when they purchased the rental property and only later found out their last names. The Notice also incorrectly indicates that the rental unit is a manufactured home when in fact it is a residential tenancy.

Section 68(1) of the Act says that "if a Notice to End Tenancy does not comply with s. 52, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice."

Given that the Tenants were served with the One Month Notice in person and that it contained their correct first names, I find that it is reasonable to conclude that the Tenants knew or should have known that the Notice applied to them and their tenancy and as a result, the Notice is amended. I further find that the Tenants would have known that it was a residential tenancy and that part of the Notice is also amended.

I find that the Tenants have not applied to cancel the One Month Notice dated August 28, 2009 and pursuant to s. 47(5) of the Act, they are deemed to have accepted that the tenancy ended on September 30, 2009. Consequently, pursuant to s. 55(2)(b) of the Act, the Landlords are entitled to an Order of Possession to take effect no later than 1:00 p.m. on January 15, 2010.

The Landlords' application to keep the Tenants' security deposit is premature and as a result, it is dismissed with leave to reapply. However, the Landlords are entitled to recover the \$50.00 filing fee they paid for this proceeding and I order pursuant to s. 72 of the Act that they may deduct that amount from the Tenants' security deposit.

Conclusion

The Landlords have been issued an Order of Possession to take effect no later than 1:00 p.m. on January 15, 2010. A copy of the Order must be served on the Tenants and may be enforced in the Supreme Court of British Columbia.

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: January 04, 2010.

Dispute Resolution Officer