



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPB, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Unpaid Rent for breach of an agreement and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant stated he received Notice of this hearing several days ago; the tenant had been away and had a friend retrieve his mail. The tenant submitted late evidence to the Residential Tenancy Branch, sent via facsimile this morning.

The landlord provided a Canada Post registered mail receipt for the Notice of hearing documents that were served to the tenant on September 21, 2011. The tenant stated he has been away, off and on. Section 90 of the Act determines that registered mail is deemed served on the 5th day after serving. I find that the tenant was served with Notice of this hearing effective September 26, 2011. A failure to regularly check mail does not avoid service; further, there is no evidence before me that the tenant was away from his home during the later portion of September, when service was completed.

Therefore, I find that the tenant was deemed served with Notice of this hearing by September 21, 2011 and that the evidence submission made by the tenant is set aside, as it was not submitted 5 days prior to the hearing. The tenant was at liberty to supply oral testimony.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession in relation to breach of an agreement?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy agreement submitted as evidence indicates that the parties signed a fixed term agreement on September 1, 2011. The agreement required the tenant to vacate the rental unit no later than September 30, 2011. The tenant and landlord initialled the clause requiring the tenant to vacate at the end of the fixed term.

The tenant testified he was under duress when he signed the agreement, as he had been renting a room from the landlord elsewhere and the landlord rented the room to someone else without the tenant's knowledge. The tenant felt he had no options but to sign the fixed term agreement. The tenant would like to move, but requires 30 days notice.

The landlord stated the tenant has not paid his rent since August, 2011, and that the tenant was aware of the terms of the tenancy agreement. The landlord requested an immediate Order of possession.

Analysis

Section 44(1)(b) of the Act provides that a tenancy end if:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy

Duress requires that the party believed that they had no option to obtain legal advice or access to independent advice. The tenant stated he had no choice but to sign the fixed term agreement, as he no longer had a residence, and needed somewhere to live. I have not considered the merits of the tenant's allegation in relation to the previous tenancy; only the circumstance that the tenant describes as having constituted duress and I find, on the balance of probabilities, that the tenant did have other options at his disposal. The tenant was free to delay the signing of the tenancy agreement or to refuse to sign a fixed term agreement. There is no evidence before me that the tenant was threatened or that he involuntarily signed the tenancy agreement.

Therefore, I find that the tenancy agreement signed on September 1, 2011, ending on September 30, 2011, requiring the tenant to vacate, valid. Therefore, as the tenancy was to end effective September 30, 2011, based upon the landlord's application, I find

that the landlord is entitled to an Order of possession that will be effective 2 days after service to the tenant.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00, which is comprised of the filing fee paid by the landlord for this Application for Dispute Resolution. Based on these determinations I grant the landlord a monetary Order for \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

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: October 19, 2011.

Residential Tenancy Branch