



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPR, MND, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only.

The landlord testified the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* personally on July 13, 2012 in accordance with Section 89.

Based on the testimony of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and/or for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 47, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a tenancy agreement signed by the parties for a month to month tenancy beginning on May 20, 2011 for a monthly rent of \$600.00 due on the 20th of each month with a security deposit of \$300.00 paid.

The landlord also submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued on July 2, 2012 with no effective date provided citing the tenant had failed to pay rent in the amount of \$700.00 that was due on July 1, 2012; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 1, 2012 with an effective vacancy date of August 1, 2012 citing the tenants are repeatedly late paying rent;

The landlord testified the tenants paid the outstanding rent on July 21, 2012. The landlord testified that she served the 1 Month Notice personally to the tenants on July 1, 2012.

The 1 Month Notice states the tenants had ten days to apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within ten days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 1, 2012.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy, effective on a date that is not earlier than 1 month after the date is received and is the day before the day in the month that rent is due if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant is repeatedly late paying rent;
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- c) The tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property.

I accept the evidence before me that the tenants failed to apply for Dispute Resolution to cancel the notice within the 10 days granted under Section 47(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 47(5) of the *Act* to have accepted that the tenancy ended in accordance with the 1 Month Notice to End Tenancy for Cause.

However, Section 53 of the *Act* stipulates that if a landlord gives a tenant a notice to end tenancy that has an effective date that does not comply with the relevant Section the effective is automatically to be changed to the earliest day that does comply.

In the case before me, as I have found the tenancy agreement states that rent is due on the 20th of each month, I find the effective date of the 1 Month Notice to be August 19, 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit held in the amount of \$300.00 in satisfaction of this claim, leaving a balance of \$250.00 in the security deposit.

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: July 31, 2012.

Residential Tenancy Branch