



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The landlord testified that the 1 Month Notice was handed to Tenant DF (the tenant) on June 22, 2012. The tenant testified that he received this Notice, but that he found it on the floor outside his door. The landlord confirmed that the tenant handed a copy of his dispute resolution hearing package to one of the landlord's representatives on June 26, 2012. I am satisfied that the parties were served with these documents.

At the hearing, the landlord requested an Order of Possession if the application to cancel the 1 Month Notice were dismissed.

At the hearing, the applicants testified that they had not received the landlord's written evidence package. The landlord said that she sent Tenant DF a copy of the landlord's written evidence package by registered mail at Tenant DF's mailing address listed on his application for dispute resolution. She provided the Canada Post Tracking Number to confirm her registered mailing of this evidence package at 4:30 p.m. on July 6, 2012. The tenant and his committee/guardian testified that they had not received this package.

Section 90 of the *Act* establishes that documents sent by registered mail are deemed to have been served on the fifth day after their mailing to the correct mailing address. At the hearing, I accepted that the landlord served Tenant DF with the written evidence package in accordance with the *Act*.

The landlord confirmed that she received notification that the committee/guardian wished to be added as an applicant on the tenant's application by way of the completion

of Residential Tenancy Branch Form #RTO -26 by the committee/guardian. On this Schedule of Parties form, the committee/guardian added his name and mailing address as a second party to the tenant's application. The landlord confirmed that she did not send the committee/guardian a copy of the written evidence package. After some discussion and review of this matter at the hearing, I determined that an adjournment would be necessary if the issues identified in the application for dispute resolution remained contentious.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This one-year fixed term tenancy commenced on August 13, 2011. Monthly rent is set at \$825.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$412.50 security deposit paid on August 11, 2011.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a final and binding resolution of their dispute.

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 31, 2012, by which time the tenant will have vacated the rental premises.
2. The landlord agreed to send another copy of the landlord's written evidence package to the tenant's committee/guardian at the mailing address listed on the Schedule of Parties for this application. The tenant's committee/guardian made this request to assist him in his role as committee/guardian, fully understanding that any of the contents of the landlord's written evidence package would have no bearing on the final and binding agreement reached between the parties at this hearing.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues in dispute at this time arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the

tenant does not vacate the rental premises in accordance with their agreement. 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.

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 18, 2012

Residential Tenancy Branch