



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant raised an issue with service of the landlord's evidence package, claiming he did not receive a copy. The landlord had produced a sworn Affidavit of Service from a process server affirming that each tenant was served with the landlord's package, in person, on July 11, 2012. The tenant claimed he was camping from July 10 – 12, 2012. The landlord's representative claimed she personally saw the tenant at the rental unit on July 11, 2012. The tenant called a witness to testify on his behalf. I agreed to hear from the witness; however, she sounded intoxicated. I asked the witness to name the people she went camping with and she did not name the tenant. I informed the parties that I found the landlord's evidence to be more credible with respect to service of the landlord's evidence package and that, on the balance of probabilities, I accepted the tenant was served with the package. I informed the tenant that I would be referring to the landlord's documents and that if he was uncertain as to the content of a particular document I would read it to him during the hearing and allow him to respond.

I proceeded with the hearing, during which time the parties were able to reach a mutual agreement to resolve this dispute.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

The parties mutually agreed to the following terms to resolve this dispute:

1. The tenancy shall end at 1:00 p.m. on July 31, 2012 at which time the tenants, will return vacant possession of the rental unit to the landlord.
2. The landlord shall pay to the tenant \$40.00 in cash before the end of the tenancy.
3. The tenant shall sign a receipt for the \$40.00 cash in the presence of witness(s).
4. The security deposit shall continue to be held in trust for the tenants, to be administered in accordance with the requirements of the Act.

The parties also raised concerns over a landlord's restricted right to enter the rental unit and giving proper notice of entry. The tenant assured the landlord that with proper written notice the tenants shall not preclude the landlord, or an authorized agent of the landlord, from entering the rental unit for the stated purpose on the Notice of Entry. I informed the parties that I would provide a copy of section 29 and 90 of the Act for their reference.

The parties further raised an issue with use of a garden area by the landlord and tenant. The parties were strongly encouraged to treat each other respectfully during the remainder of the tenancy and to not destroy any plants planted by the other party. After the tenancy ends the tenants no longer have the right to return to the property for the purpose of harvesting fruit or vegetables from the plants left at the property.

Analysis

Under section 63 of the Act I have the authority to assist parties reach a settlement agreement and record the agreement in a decision or order.

I have accepted the mutual agreement reached between the parties and order that the terms be an order to be binding upon both parties.

In recognition of the mutual agreement I provide the landlord with an Order of Possession effective at 1:00 p.m. on July 31, 2012.

In recognition of the mutual agreement I provide the tenant with a Monetary Order in the amount of \$40.00 to ensure payment is made by the landlord.

As I stated during the hearing, below I have reproduced section 29 and 90 of the Act for the parties' reference:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

When documents are considered to have been received

90 A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

Conclusion

This dispute has been resolved by mutual agreement as recorded in this decision. The landlord has been provided an Order of Possession effective at 1:00 p.m. on July 31, 2012. The tenant has been provided a Monetary Order in the amount of \$40.00 to ensure payment is made pursuant to the mutual agreement.

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 19, 2012.

Residential Tenancy Branch