



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony. Despite in-person service of the application for dispute resolution and notice of hearing (the "hearing package") on July 12, 2012, the tenant did not appear.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written "Lease Agreement," the 2 month fixed term of tenancy is from May 1 to June 30, 2012. The agreement provides that "the tenancy ends with expiration of this lease agreement and thus the Lessee shall vacate the premises by 1 p.m. on the 30th day of June, 2012." Monthly rent of \$500.00 is due and payable in advance on the first day of each month, and a security deposit of \$125.00 was collected.

In addition to recovery of the \$50.00 filing fee, in his application the landlord seeks a monetary order of \$500.00, reflecting rent which was unpaid when due on June 1, 2012. However, during the hearing the landlord testified that June's rent is now paid in full.

Further, however, the landlord testified that the tenant did not vacate the unit on June 30, 2012 as required by the "Lease Agreement." Accordingly, the landlord seeks an order of possession. In his application the landlord appears to have initially applied for an order of possession on 2 separate grounds by way of ticking boxes adjacent to the following 2 **"reason[s] for ending tenancy:"**

The tenant has not paid rent or utilities

The landlord has cause, as described in the Act, regulation or tenancy agreement

The application shows that the 2 tick marks were scratched out, and initials appear beside both boxes where the apparent changes to the application were made. There is no amended application before me, filed subsequent to the time when the application was received by the Residential Tenancy Branch (the “Branch”) on July 9, 2012.

While the landlord’s application indicates that a notice to end tenancy was mailed to the tenant on June 16, 2012, during the hearing the landlord testified that the “notice” consisted of a letter from him to the tenant in which he reminded the tenant that he was required to vacate the unit effective June 30, 2012.

The landlord was concerned in the hearing about questions related to the absence of an amended application, and upset that the current application may not lead to the granting of an order of possession. The landlord was also disturbed that documents further to a copy of the “Lease Agreement,” which he claimed had been provided to the Branch by another person acting on his behalf, were not before me in evidence. In the result, the landlord abruptly left the conference call hearing at approximately 11:50 a.m.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Arising from the affirmed / undisputed testimony of the landlord, as June’s rent of \$500.00 has now been paid in full, I consider the landlord’s application for a monetary order to that effect to be withdrawn.

Section 55 of the Act addresses **Order of possession for the landlord**, and provides in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord’s notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant’s application or upholds the landlord’s notice.

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

There is no application before me from the tenant, only from the landlord.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the "Lease Agreement" provides that the tenant must vacate the unit by no later than June 30, 2012. While the tenant has not vacated the unit as required, I find that neither has the landlord served the tenant with a Notice to End Tenancy for Cause. Section 47 of the Act speaks to **Landlord's notice: cause**.

As well, I find that the landlord's application for dispute resolution does not include an application for an order of possession on the ground that the "tenant has breached an agreement with the landlord." Indeed, the application ultimately filed with the Branch does not include an application for an order of possession on any ground.

Finally, there is no amended application before me from the landlord in which the landlord applies for an order of possession on the aforementioned ground or any other ground.

Conclusion

The landlord's application is hereby dismissed with leave to reapply.

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 26, 2012.

Residential Tenancy Branch