



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, 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 tenant was 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 August 4, 2012 in accordance with Section 89.

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

The landlord testified the tenant had paid rent for August 2012 and as such there are no longer any rental arrears. I amend the landlord's Application to exclude a monetary order for unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession because the tenant provided the landlord with a notice to end the tenancy and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began in August 2008 and is currently a month to month tenancy for a monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The landlord testified that he had issued the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective vacancy date of June 30, 2012.

The landlord testified that the tenant refused to vacate the rental unit at the end of June but provided the landlord with a written notice signed by the tenant on July 3, 2012 that

he will move out of the rental unit by July 31, 2012. The landlord submitted a copy of this notice into evidence. The landlord testified that the tenant is still in the rental unit.

Analysis

Section 55(2) of the Act states a landlord may request an order of possession of a rental unit if a notice to end the tenancy is given by the tenant. Residential Tenancy Policy Guideline #11 stipulates that a landlord or tenant cannot unilaterally withdraw a notice to end tenancy.

I accept from the undisputed evidence before me that the tenant provided the landlord with a notice to end the tenancy to be effective July 31, 2012 and that by his actions of failing to vacate the rental unit in accordance with that notice the tenant is attempting to unilaterally withdraw his notice.

As Guideline #11 states that a party cannot unilaterally withdraw their notice, and since the landlord has applied for an order of possession, I accept the landlord has not agreed to the tenant's attempt to withdraw the notice.

Conclusion

For the reasons noted above, I find the landlord is entitled to an order of possession effective **August 31, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails 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 the **\$50.00** fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$350.00 in satisfaction of this claim, leaving a balance of \$300.00 to be dispersed at the end of the tenancy in accordance with the *Act*.

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: August 30, 2012.

Residential Tenancy Branch