



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC OLC FF

For the landlords: OPC OPB FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”).

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause, for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlords applied for an Order of Possession for Cause, and to recover the filing fee.

The tenant and the landlords attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. Both parties confirmed receipt of the evidence package from the other party and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act*.

Issues to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Are the landlords entitled to an order of possession under the *Act*?
- Should the landlords be directed to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

A fixed term tenancy agreement began on July 1, 2012 and was scheduled to expire on July 31, 2014. Monthly rent in the amount of \$1,500.00 is due on the first day of each month. A security deposit of \$750.00 was paid by the tenant at the start of the tenancy.

The landlords' testified that they posted a 1 Month Notice to End Tenancy for Cause (the "Notice") dated August 28, 2012 on the tenant's door at approximately 2:22 p.m. on August 29, 2012. At approximately 4:00 p.m. on the same date, the landlords testified that the tenant called them and spoke about the Notice. The tenant testified that he did recall speaking with the landlords on that date about the Notice. Later in the hearing, the tenant changed his testimony by stating that he was deemed to be served 3 days after the date provided by the landlords and that he called the landlords about "some other notice" on August 29, 2012.

Analysis

Based on the tenant's original testimony during the hearing provided under oath, I do not accept the tenant changing his testimony later in the hearing. **I find** the tenant received the Notice on August 29, 2012.

I find the tenant failed to dispute the Notice within 10 days pursuant to section 47 of the *Act*. I advised the parties that I would not be cancelling the Notice as a result, and that the landlord is entitled to an order of possession effective 2 days after service on the tenant. The parties, however, were able to reach a mutually settled agreement regarding the order of possession effective date which is described below.

The tenant alleged that he did not receive a copy of the tenancy agreement at the start of the tenancy. The landlords disputed the tenant's testimony and testified that they provided a copy to the tenant in May 2012, when they signed the agreement, and again when they applied for dispute resolution. The tenant confirmed that he now has a copy of the tenancy agreement.

Settlement Agreement

During the hearing, the parties mutually agreed to settle their matters on the following conditions:

- 1) The tenancy will end on **October 31, 2012 at 1:00 p.m.**
- 2) The tenant will provide vacant possession of the rental unit including the return of the keys to the landlords on October 31, 2012 at 1:00 p.m.
- 3) The parties will meet at the rental unit on October 31, 2012 at 1:00 p.m. for the purposes of participating in a move-out condition inspection.

The landlords withdrew their request to recover the filing fee during the hearing.

I dismiss the tenant's application, without leave to reapply. Therefore, I **do not** grant the tenant the recovery of the filing fee.

As to ordering the landlords to comply with the *Act*, the tenant requested an order for the landlords to provide him a copy of the tenancy agreement. For the benefit of both parties, section 13(3) of the *Act*, requires that within 21 days after the landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement. **I find** that the tenant now has a copy of the tenancy agreement, however, based on the disputed testimony, I do not make a finding on when that agreement was originally provided.

Conclusion

I grant the landlords an order of possession effective **October 31, 2012 at 1:00 p.m.** The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 16, 2012

Residential Tenancy Branch