



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; to retain the security deposit; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing documents by registered mail, sent January 10, 2013, to the rental unit. The Landlord's agent gave the tracking numbers for the registered documents.

Based on the Landlord's agent's affirmed testimony, I find that the Tenant was duly served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. Despite being duly served, the Tenant did not sign into the Hearing and the Landlord's application proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- May the Landlord retain the security deposit?

Background and Evidence

Rent is due on the first of the month. The Tenant paid a security deposit in the amount of \$625.00 at the beginning of the tenancy.

The Landlord provided a copy of the Notice to End Tenancy for Cause issued November 26, 2012, (the "Notice") in evidence. The Landlord's agent testified that she served the Tenant with the Notice by regular mail, sent on November 26, 2012 to the rental unit.

The Tenant did not file an Application for Dispute Resolution seeking to cancel the Notice.

The Landlord's agent testified that the Tenant is still living in the rental unit and that she paid rent for January, 2013. The Landlord's agent stated that the Tenant was advised that the rent payment was for use and occupancy only.

The Landlord's agent stated that she sought to retain the security deposit in order to cover cleaning and other costs after the Tenant moves out of the rental unit.

Analysis

Based on the Landlord's agent's affirmed testimony, I find that the Tenant was duly served with the Notice in accordance with the provisions of Section 88(c) of the Act. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents, December 1, 2012.

The Tenant did not file for dispute resolution, within 10 days of receiving the Notice to End Tenancy. Page two of the Notice clearly indicates that the Tenant has 10 days after receipt of the Notice to file an Application to dispute it.

A Notice to End Tenancy for Cause ends the tenancy effective on a date that is not earlier than one month after the date the Notice is received and is the day before the day in the month that rent is payable under the tenancy agreement. Section 53 of the Act provides that an incorrect effective date is automatically changed to the earliest date that complies with the Act. Therefore, I find the effective date of the end of tenancy was January 31, 2013.

Pursuant to the provisions of Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2013. I find that the Landlord is entitled to an Order of Possession effective **two days after service of the Order upon the Tenant.**

The Landlord has been successful in its application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Tenant. Pursuant to the provisions of Section 72 of the Act, the Landlords may deduct this amount from the security deposit.

I find that the Landlord's application to retain the security deposit is premature and I dismiss this portion of the application with leave to reapply. The balance of the security deposit, after deducting the filing fee, in the amount of **\$575.00**, remains available on application by either party in accordance with the provisions of the Act.

Conclusion

The Landlord's application to retain the security deposit is **dismissed with leave to reapply.**

I hereby provide the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I order that the Landlords may deduct the cost of the **\$50.00** filing fee from the security deposit. The balance of the security deposit, in the amount of \$575.00, must be applied in accordance with the provisions of 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: February 01, 2013
