



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for \$500.00 in damage to the rental unit pursuant to section 67, the amount that the landlord paid as the deductible before an insurance payment was received for damage allegedly caused by the tenants;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- other remedies, described in the landlord's application as an Order of Possession at the end of this fixed term tenancy on March 1, 2013, pursuant to section 55;

The tenants did not attend this hearing, although I waited until 1:43 p.m. in order to enable them to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue – Service of Documents

The landlord testified that she posted three separate dispute resolution hearing packages (including her written evidence) on the door of the rental unit on February 11, 2013. Two of these packages were addressed to the two tenants, whose names appear above. The other package was addressed to "All Other Occupants", a third Respondent name that I have removed from the landlord's style of cause.

Analysis – Service of Documents

Section 89 of the *Act* establishes Special rules for certain documents, which include an application for dispute resolution. Section 89(2)(d) of the *Act* allows a landlord to serve an application for dispute resolution seeking an Order of Possession by posting the dispute resolution hearing package on the tenants' door. I am satisfied that the landlord's posting of her dispute resolution hearing package on the tenants' door satisfied the requirements of section 89(2)(d) of the *Act*, and the landlord's application for an Order of Possession is duly before me.

Section 89(1) of the Act outlines the following allowable methods of service delivery for an application for a monetary award:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord has not served the tenants in a manner required by section 89(1) of the Act. As I am not satisfied that the tenants were properly served with the landlord's application for dispute resolution for a monetary award, I dismiss the landlord's application for a monetary award with leave to reapply. As I cannot consider an application for a monetary award in this application, I dismiss the landlord's application to recover the filing fee for this application without leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) between the parties. Monthly rent is set at \$1,500.00, payable in advance on the first of each month, plus heat. The landlord continues to hold the tenants' \$750.00 security deposit. According to this Agreement, this fixed term tenancy commencing on January 21, 2012 is scheduled to end by March 1, 2013. Section 2 of that Agreement, initialled by both tenants and the landlord, noted that both parties agreed that the tenancy ends on March 1, 2013, by which time the tenants must have yielded vacant occupancy of the rental unit to the landlord.

The landlord applied for an Order of Possession in the event that the tenants or occupants do not vacate the premises in accordance with the terms of the signed Agreement.

Analysis

Section 44 of the *Act* sets out how tenancies end. One of these ways is set out in section 44(1)(b) of the *Act*, which establishes that a tenancy ends if “the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.” I find that there is undisputed evidence that this tenancy is scheduled to end by March 1, 2013 and there is no evidence of any written agreement between the parties to extend this tenancy beyond that date.

Section 55(2)(c) of the *Act* allows a landlord to request an Order of Possession if “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.”

Based on the undisputed evidence presented by the landlord, I find that this tenancy ends in accordance with the Agreement by March 1, 2013. I grant the landlord an Order of Possession to take effect by 1:00 p.m. on March 1, 2013 to ensure that the landlord gains vacant possession of the rental unit in accordance with the Agreement between the parties.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on March 1, 2013. Should the tenant(s) or any other occupants of these rental premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord’s application for a monetary award for damage with leave to reapply. I dismiss the landlord’s application to recover the filing fee for this application from the tenants without 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: February 25, 2013

Residential Tenancy Branch

