



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

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

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this application with one another. The landlords' agent (the landlord) testified that her colleague handed Tenant RS the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on March 5, 2013 at 3:51 p.m. The landlord entered into written evidence a statement from the landlords' representative who handed this Notice to Tenant RS. The tenant maintained that there was no Tenant RS and said that "Sheldon", the name listed as the surname of the second tenant, was his middle name. The tenant and another individual who initially attempted to participate in this hearing as the co-tenant (RW) said that the actual tenants in this tenancy were ME (the tenant who participated in this hearing) and RW. Despite this confusion, the tenant (ME) did confirm that he had received the landlords' 1 Month Notice. He also confirmed that no application to cancel the landlords' 1 Month Notice was filed with the Residential Tenancy Branch (the RTB). In accordance with section 88 of the *Act*, I find that service of the 1 Month Notice to either of the respondents identified in the landlords' application constituted service to all tenants in this tenancy. I find that the 1 Month Notice was served to the tenants in this tenancy.

The landlord entered undisputed written and sworn oral testimony that on March 28, 2013, she sent the respondents a copy of the landlords' dispute resolution hearing package by registered mail. She provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenant confirmed that he and the correct co-tenant (RW) received the landlords' dispute resolution hearing package. I am satisfied that the landlords served this package to the respondents in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for cause? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy began on December 1, 2012. Monthly rent is set at \$675.00, payable in advance on the first of each month. The landlords continue to hold the tenants' \$337.50 security deposit, paid on or about November 24, 2012.

The landlords entered into written evidence a copy of the 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by April 30, 2013, the landlords cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has engaged in illegal activity that has, or is likely to:

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

At the hearing, the tenant testified that he and the co-tenant (RW) were planning to vacate the rental unit later during the week of the hearing and certainly by May 1, 2013. He said that he was not opposing the landlords' application for an end to this tenancy and an Order of Possession. However, in order to pay for a truck to remove the tenants' possessions and move to another location, they would need the landlord(s) to return their security deposit.

The landlord refused to return the tenants' security deposit while the tenancy was still ongoing, as the return of this deposit was dependent on the condition of the premises at the end of the tenancy. Section 38 of the *Act* gives the landlord 15 days after the latter of the end of the tenancy or the date when the tenants provide their forwarding address in writing to return the tenants' security deposit.

At the hearing, the tenant expressed frustration that the landlord would not agree to release the security deposit to the landlord while the tenants remained in the rental unit. Although the tenant committed to end the tenancy by the first of May, he said that he saw little purpose in continuing with this hearing, presumably because the landlord was unwilling to return the tenants' security deposit while the tenancy continued. I noted that no application for a return of the security deposit was before me and that a tenant cannot obtain an order requiring a landlord to return a security deposit before a tenancy ends. The tenant disconnected from the teleconference hearing at this point.

The landlord said that she would be satisfied with an Order of Possession to take effect by May 1, 2013, the date by which the tenant had confirmed the tenants planned to have vacated the rental unit.

Analysis

Based on the landlords' undisputed evidence, I am satisfied that the landlords had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The respondents have not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the respondents' failure to take this action within ten days leads to the end of this tenancy on the effective date of the notice. In this case, this requires the tenants **and anyone on the premises** to vacate the premises by April 30, 2013. The landlords will be given a formal Order of Possession to take effect by 1:00 p.m. on May 1, 2013, which must be served on the tenant(s). If the premises are not vacated by that time and date, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee for this application from the respondents.

Conclusion

The landlords are provided with a formal copy of an Order of Possession effective by 1:00 p.m. on May 1, 2013. According to the Rules of the Courts, a landlord must serve **this Order** to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlords' favour in the amount of \$50.00 for the recovery of the landlords' filing fee for this application. To give effect to this award, I order the landlords to retain \$50.00 from the security deposit held for this tenancy. I order that the current value of the security deposit held by the landlords for this tenancy is reduced from \$337.50 to \$287.50.

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: April 24, 2013

Residential Tenancy Branch

