



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPC FF

For the tenant: CNC 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 landlords applied for an order of possession for cause, and to recover the filing fee.

The tenant applied to cancel a Notice to End Tenancy for Cause, and to recover the filing fee.

The male landlord attended the hearing. The hearing process was explained to the landlord and an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present the landlords’ evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant did not attend the hearing. The tenant was provided with a copy of the Notice of a Dispute Resolution Hearing after filing his application dated June 10, 2013. The tenant, however, did not attend the hearing set for today at 11:00 a.m. The phone line remained open for twenty minutes and was monitored throughout this time. The only party to call into the hearing was the male landlord. Following the ten minute waiting period, **the application of the tenant was dismissed without leave to reapply.** The hearing continued with consideration of the landlords’ application.

The landlord stated that he served the tenant with the Notice of Hearing and evidence by mail on June 18, 2013, and in person on June 24, 2013, at the rental unit at 7:00

a.m., and that his wife was present as a witness on June 24, 2013, when the tenant was served at the rental unit. I find that the tenant was sufficiently served under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?

Background and Evidence

A fixed term tenancy began on September 13, 2012 and reverted to a month to month tenancy after March 30, 2013. Monthly rent in the amount \$1,500.00 was 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 which the landlords continue to hold.

The landlord stated that a 1 Month Notice to End Tenancy for Cause for repeated late payment of rent (the "1 Month Notice") dated May 31, 2013 was served on the tenant on May 31, 2013. The 1 Month Notice was submitted in evidence by the landlord. The effective date on the 1 Month Notice is June 30, 2013. The tenant continues to occupy the rental unit and has refused to leave.

During the hearing, once the tenant's application to cancel the 1 Month Notice was dismissed without leave to reapply, the landlord verbally requested an order of possession.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, and on the balance of probabilities, I find the following. Section 55 of the *Act* states:

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) the director dismisses the tenant's application or upholds the landlord's notice.

[emphasis added]

Given the above and taking into account the landlord's oral request for an order of possession during the hearing, **I find** that the landlords are entitled to an order of possession **effective two (2) days after service on the tenant**, as the effective date of the 1 Month Notice was June 30, 2013 which has passed and the tenant continues to occupy the rental unit. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the landlords' claim had merit, **I grant** the landlords the recovery of their filing fee in the amount of **\$50.00**. **I authorize** the landlords to retain \$50.00 from the tenant's security deposit in full satisfaction of the recovery of their filing fee. As a result, **I find** the tenant's \$750.00 security deposit is now reduced to \$700.00, due to the \$50.00 filing fee granted to the landlords.

As the tenant's claim was dismissed, **I do not grant** the tenant the recovery of the tenant's filing fee.

Conclusion

I find that the landlords have proven their claim and are, therefore, entitled to an order of possession **effective two (2) days after service on the tenant**. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I authorize the landlords to retain \$50.00 from the tenant's \$750.00 security deposit in full satisfaction of the recovery of the landlords' filing fee, leaving the tenant's security deposit balance at \$700.00.

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: July 09, 2013

Residential Tenancy Branch

