



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began in November 2008. Rent of \$900 is payable monthly. No security deposit was collected. The Landlord states that on May 1, 2013 the Tenant was served with a 2 month notice to end tenancy for landlord’s use (the “Notice”) personally and by registered mail. The effective date of the Notice is June 30, 2013. Noting that no

reason was provided on the Notice, the Landlord states that the intention of the Landlord is to move into the unit herself. The Tenant has not moved out of the unit, has not made an application to dispute the notice and has not paid any rent for August and September 2013. The Tenant was provided the unit for no rent for July 2013 for the purposes of the Notice.

Analysis

Section 53 of the Act provides that where a landlord gives notice to end a tenancy effective on an incorrect date, the notice is deemed to be changed to the earliest date that complies with the Act. Based on the Landlord's evidence of personal service of the Notice, I find that the effective date of the Notice is automatically adjusted to July 31, 2013.

Section 49 of the Act provides that where a tenant has received a notice to end tenancy for landlord's use the tenant has fifteen days to make an application for dispute resolution to dispute the notice. Where a tenant does not dispute the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the unit by that date. Based on the undisputed evidence of the Landlord, I find that the Tenant was served with the notice to end tenancy for landlord's use (the "Notice") on May 1, 2013 in person and on May 1, 2013 by registered mail. The Tenant has not disputed the Notice and must therefore vacate the unit as the effective date has now passed. As such I find that the Landlord is entitled to an Order of Possession.

Based on the undisputed evidence of the Landlord, I find that the Tenant is over holding the unit and that the Landlord is entitled to monies for "use and occupancy" for August 2013 and to September 15, 2013 in the amount of **\$1,350.00**. Should the Landlord not obtain possession of the unit by this date due to the Tenant not leaving the unit, I give the Landlord leave to reapply for monetary losses.

As the Landlord has been successful with the application, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total monetary entitlement of **\$1,400.00**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **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.

I grant the Landlord an order under Section 67 of the Act for **\$1,400.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: September 10, 2013

Residential Tenancy Branch

