



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to comply with the Act and for recovery of the filing fee.

The tenant attended the telephone conference call hearing; neither landlord attended.

The tenant gave affirmed testimony that she served each landlord with her Application for Dispute Resolution and Notice of Hearing by registered mail within three days after receiving the hearing package to be delivered to the respondents. The tenant was unable to testify as to the tracking numbers, as she was unable to locate them during the hearing; however the tenant testified that she has spoken with the landlord's agent, SG, since delivering the hearing packages, with SG informing the tenant that the owner of the residential property did not want to fight her application.

I allowed the tenant to fax in copies of the registered mail receipts, containing the tracking numbers after the hearing.

Based upon the affirmed submissions of the tenant, I find the landlord was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the landlord's absence.

The tenant was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the Act?

Background and Evidence

The tenant testified that this tenancy began in July 2012 and monthly rent is \$1800, payable on the first day of the month.

The tenant's application contains a request that the landlord comply with the Act; specifically the tenant testified that she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") from the landlord, on the late afternoon of November 1, 2013. The tenant supplied a copy of the Notice, which is dated November 1, 2013, for an effective move-out date of December 31, 2013.

The tenant is seeking an order that she be allowed to stay in the rental unit until January 31, 2014, as the landlord failed to issue the Notice in the proper time frame necessary for the tenancy to end on December 31, 2013.

The tenant submitted that the landlord has cashed her rent cheque for December and appears to be unaware that she is entitled to compensation equal to 1 month's rent for having received the Notice. The tenant said that the landlord has her post dated rent cheques which run through at least July 2014.

Analysis

Based upon the relevant oral and documentary evidence, I find the tenant's application should be granted.

A notice to end the tenancy, in this case, a 2 Month Notice, is not effective earlier than two months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, two clear calendar months before the next rent payment is due is required in giving a 2 Month notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act.

In the case before, I find the move-out date of December 31, 2013, listed on the 2 Month Notice issued by the landlord on November 1, 2013, to be invalid as the landlord was required to deliver the Notice at least by October 31, 2013, or earlier.

I therefore find that the earliest date the 2 Month Notice here could be effective is January 31, 2014, and I therefore change the effective end of tenancy on the Notice to January 31, 2014. I grant the tenant an order requiring the landlord to comply with section 53 of the Act and I further grant the tenant an order allowing her to stay in the rental unit until that date.

I remind the tenant that unless otherwise agreed, she should vacate the rental unit by 1:00 p.m. on January 31, 2014.

I remind the landlords of their obligation under section 51 of the Act, which is to compensate the tenant the equivalent to one month's rent for having issued the tenant a 2 Month Notice. The tenant is allowed under section 51(1.1) to withhold her last month's rent, in this case the January 2014 rent.

I allow the tenant recovery of her filing fee of \$50 due to her successful application.

Conclusion

The tenant's application is granted and I have changed the effective move out date of the Notice to January 31, 2014.

I grant the tenant a final, legally binding monetary order pursuant to section 67 and 72 of the Act for the amount of \$50, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: December 13, 2013

Residential Tenancy Branch

