



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for cause, a monetary order for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and filing fee costs.

The landlord provided affirmed testimony that on December 12, 2013 at approximately 2:30 p.m. he gave the tenant's mother the hearing documents and evidence. Service occurred at the mother's business. That evening the tenant contacted the landlord and told him she had taken the hearing documents to the police, as there had been issues with people the tenant had allowed to reside in the rental unit. The tenant had used the hearing documents to prove to the police that she was in fact the tenant. The tenant also went to see the landlord on the evening of December 12, 2013; when she discussed the hearing and acknowledged receipt of the hearing documents.

Section 71(2) of the Act provides:

(2) In addition to the authority under subsection (1), the director may make any of the following orders:

(a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];

(b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;

(c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

(Emphasis Added)

Based on the affirmed testimony of the landlord, I find that the tenant has been sufficiently served with the hearing documents and evidence, via her mother, effective December 12, 2013.

Preliminary Matters

The landlord's application indicated a claim in the sum of \$1,500.00 for unpaid rent and damage to the unit. The landlord did not supply a detailed calculation of the claim. In

the absence of a detailed calculation of the claim, pursuant to section 59(2)(b), I declined to hear the monetary portion of the application.

Section 59(5)(a) of the Act provides the authority decline an application when it does not comply with 59(2)(b) of the Act, by disclosing the full particulars of the claim.

The landlord has leave to reapply requesting compensation and to claim against the security deposit held in trust.

Background and Evidence

The tenancy commenced on January 4, 2004 rent is \$1,100.00 per month, due on the 1st day of each month. A security deposit in the sum of \$550.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The landlord testified that a 1 month Notice to end tenancy for cause was given to the tenant's mother on October 11, 2013, at the mother's place of business. Service to the mother occurred in the afternoon. That night the tenant telephoned the landlord and acknowledged she had received the Notice. The tenant told the landlord that she did not dispute the ending of the tenancy.

During November 2013 the tenant made a number of payments toward rent; all November rent was paid. The landlord continued to tell the tenant that the tenancy was going to end effective November 30, 2013; the effective date of the Notice. The Notice indicated that if the tenant did not apply to dispute the Notice, the tenancy would end on the effective date.

The landlord was last at the rental unit on December 8 or 9th, 2013; individuals were still in the home. The landlord said these are people who are not tenants but individuals who the tenant had allowed to have access to the home.

The landlord said that 10 minutes prior to the hearing he telephoned the tenant's mother to tell her that the tenant should enter the conference call. The tenant did not attend the hearing.

Analysis

I find, pursuant to section 71 of the Act, that the tenant was sufficiently served with the 1 month Notice ending tenancy for cause issued on October 11, 2013. The tenant contacted the landlord on the evening of October 11, 2013, to discuss the Notice; indicating she had received the Notice from her mother.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy ended on the effective date of the Notice, November 30, 2013.

The landlord has accepted rent payments; however, the tenant understood a hearing had been set for today's date and she failed to attend the hearing. I find that the intention of the landlord was clear; that when he served the tenant with Notice of the hearing and accepted November rent payments he informed the tenant that he wished to have the tenancy end.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession that is effective 2 days after it is served to the tenant.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

As the landlord's application has merit I find that the landlord is entitled to the \$50.00 filing fee cost which may be deducted from the \$550.00 security deposit held in trust. Therefore, the landlord will now hold a deposit in the sum of \$500.00.

Conclusion

The landlord is entitled to an Order of possession.

The landlord has leave to reapply requesting monetary compensation within the legislated time-frames.

The landlord may deduct the \$50.00 filing fee cost from the \$550.00 deposit. The \$500.00 balance of the security deposit will be disbursed in accordance with the Act.

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: January 02, 2014

Residential Tenancy Branch

