



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF, MT, DRI, CNC

Introduction

There are applications filed by both parties. The landlord seeks an order of possession as a result of a 1 month notice to end tenancy issue for cause and recovery of the filing fee. The tenant has filed an application for more time to be allowed to make an application to cancel a notice to end tenancy and if allowed to obtain an order to cancel a notice to end tenancy issued for cause, to dispute an additional rent increase and recovery of the filing fee.

The landlord attended the hearing by conference call and gave testimony. The tenants attended the hearing by conference call and gave testimony. The tenants both confirm receiving the landlord's notice of hearing package and the submitted documentary evidence. The landlord states that she just received the tenant's notice of hearing package the day before the hearing on April 7, 2014 in person and disputes the application being filed correctly and wishes it to be dismissed. The tenant, S.M. stated that J.P. was responsible for serving the notice and is not aware of the circumstances and stated, "I don't know." The tenant, J.P. stated that he had a broken leg and was out of the country in Jamaica and that someone else was supposed to serve the landlord, but failed to do so. The tenant, J.P. provided no other details as to why no service was attempted after filing the application for dispute between March 11, 2014 until April 7, 2014.

During the hearing, the tenant, J.P. stated that the application to dispute an additional rent increase was selected in error and wishes to withdraw it from the application. The landlord confirmed this in her direct testimony that no rent increase notices were given to the landlord. As such, no further action is required.

Residential Tenancy Policy Guideline #36 speaks to extending a time period. An Arbitrator may extend or modify a time limit established by the Residential Tenancy Act only in exceptional circumstances. An Arbitrator may not extend the time limit to apply

for dispute resolution beyond the effective date of a notice to end tenancy and may not extend the time within rent must be paid without the consent of the Landlord.

“Exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit.

On the landlord's request to dismiss the tenant's application, I find that the tenant has failed to provide sufficient evidence of exceptional circumstances that prevented them from filing an application for dispute resolution within the 3 days of filing the application.

The landlord's request is granted and the tenant's application is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

This tenancy began on July 15, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$2,850.00 payable on the 1st of each month and a security deposit of \$1,425.00 and a pet damage deposit of \$1,425.00 were paid. Both parties agreed that the tenant still occupies the rental unit.

The landlord states that the tenant was served with a 1 month notice to end tenancy issued for cause dated February 1, 2014 which shows an effective end of tenancy date of March 31, 2014. The notice displays one reason for cause.

-Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Analysis

I accept the undisputed evidence of both parties and find that the tenant was properly served with the 1 month notice to end tenancy issued for cause dated February 1, 2014. The tenant did not file an application for dispute resolution within the allowed 10 day timeframe and is conclusively presumed to have accepted that the tenancy was at an end. The landlord is granted an order of possession. The order of possession must be served upon the tenants. Should the tenants 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.

The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$50.00.

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 08, 2014

Residential Tenancy Branch

