



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FF

Introduction

In his original application the landlord sought an order of possession for landlord's use of property / a monetary order for \$300.00, and recovery of the filing fee. Details related to 2 subsequent amendments to the original application are discussed below. The landlord attended this hearing and gave affirmed testimony. Neither tenant appeared.

The landlord testified that the original application for dispute resolution and notice of hearing was served by way of posting on the unit door. Section 88 and 89 of the Act address, respectively, **How to give or serve documents generally**, and **Special rules for certain documents**. Section 89 speaks specifically to the ways in which an application for dispute resolution must be served, and service by way of posting on the unit door is not included amongst them. Accordingly, despite the landlord's testimony that the tenants acknowledged receipt of the original application for dispute resolution, in their absence at this hearing I am unable to find that service of the application was undertaken pursuant to the Act. Despite this, in view of the manner in which events unfolded in the tenancy, circumstances surrounding the dispute are set out below.

The landlord testified that subsequent to the original filing of his application on March 10, 2014, the tenants vacated the unit on or about April 01, 2014. Accordingly, the landlord's application for an order of possession is withdrawn.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy between the landlord and these 2 particular tenants began on December 01, 2013. Monthly rent of \$1,250.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

Prior to the subject tenancy, the landlord had a tenancy agreement for the same unit with tenant "CS" (1 of the 2 subject tenants) and "CS's" cousin, "VL." The previous tenancy began on August 15, 2013 and ended by way of mutual agreement on or about November 30, 2013.

Pursuant to section 49 of the Act which speaks to **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated February 24, 2014. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is May 01, 2014. The reason shown on the notice in support of its issuance is as follows:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

Even while the tenants did not file an application to dispute the notice, the landlord was uncertain that they planned to vacate the unit by May 01, 2014 as required by the notice. Accordingly, in his original application for dispute resolution filed on March 10, 2014, the landlord sought an order of possession for landlord's use of property, in addition to certain other compensation, and recovery of the filing fee.

Subsequently, the landlord filed an amended application for dispute resolution on March 14, 2014, in which he sought only an order of possession for landlord's use of property, and recovery of the filing fee. During the hearing the landlord could not specifically recall details around how that amended application may have been served on the tenants.

Thereafter, the landlord filed a second amended application for dispute resolution on April 14, 2014. As earlier noted, the tenants vacated the unit on April 01, 2014, and the landlord's application for an order of possession was withdrawn. In this current application the landlord seeks to retain a portion of the security deposit to cover cleaning costs of \$525.00, and to recover the \$50.00 filing fee. However, as the tenants did not inform him of a forwarding address, the current and most recently amended application for dispute resolution has not been served on the tenants.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the landlord's original application for dispute resolution was not served pursuant to the Act. In the absence of certainty by the landlord, I am also unable to find that the first amended application was served according to the Act. Finally, and

as acknowledged by the landlord, as the tenants vacated the unit without providing a forwarding address prior to the landlord's submission of a second amended application on April 14, 2014, this current and most recently amended application for dispute resolution has not been served on the tenants in any manner whatsoever. Accordingly, I find that the landlord's application for retention of a portion of the security deposit must be dismissed with leave to reapply.

As portions of the landlord's applications have variously been withdrawn and dismissed with leave to reapply, the landlord's application to recover the filing fee is hereby dismissed.

Finally, the attention of the parties is drawn to the following particular sections of the Act:

Section 38: **Return of security deposit and pet damage deposit**

Section 39: **Landlord may retain deposits if forwarding address not provided**

Conclusion

The landlord's application to retain a portion of the security deposit is dismissed with leave to reapply.

The landlord's application to recover the filing fee is dismissed.

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: May 01, 2014

Residential Tenancy Branch

