



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Hollyburn Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OP, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / and recovery of the filing fee. The landlord's agents attended and gave affirmed testimony.

The landlord testified that the application for dispute resolution and notice of hearing (the "hearing package") was served on tenant "VMB" by way of registered mail. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail. The landlord testified that the hearing package was personally served on tenant "JLB" on October 09, 2014. Despite all of the foregoing, neither tenant appeared.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the term of tenancy is from October 01, 2013 to September 30, 2014. Monthly rent of \$1,075.00 is due and payable in advance on the first day of each month, and a security deposit of \$537.50 was collected.

Pursuant to a "resident notice to vacate," dated August 07, 2014, tenant "VMB" gave notice to end tenancy effective September 30, 2014. Thereafter, while tenant "VMB" had vacated the unit by September 30, 2014 and now resides elsewhere, tenant "JLB" did not vacate the unit. No rent for October 2014 had neither been offered nor accepted, and the landlord testified that tenant "JLB" is currently incarcerated. Further, the landlord testified that tenant "JLB" has authorized a family member to begin removing some of his possessions from the unit. As well, the landlord testified that new

renters are available to take possession of the unit, and a tenancy agreement has been entered into by the parties to that effect.

Analysis

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

Section 55 of the Act addresses **Order of possession for the landlord**, in part:

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

Further, Residential Tenancy Policy Guideline # 13 speaks to “Rights and Responsibilities of Co-tenants,” in part:

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that tenant “VMB” (1 of the 2 tenants named on the tenancy agreement) gave notice to end tenancy effective September 30, 2014 and, thereafter, tenant “VMB” vacated the unit by that date. I find that while tenant “JLB” did not vacate the unit by September 30, 2014, no new tenancy agreement was entered into by the landlord and tenant “JLB,” and no rent was either offered or accepted for the month of October 2014. Further, I find that by way of a family member, tenant “JLB’s” possessions are in the process of being removed from the unit.

In the result, I find that the landlord has established entitlement to an order of possession. As the landlord has succeeded with this application, I find that the landlord

has also established entitlement to recovery of the filing fee. I order that the landlord may recover the filing fee by way of withholding \$50.00 from the security deposit.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant(s). This order must be served on the tenant(s). Should the tenant(s) 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 order that the landlord may withhold **\$50.00** from the security deposit in order to recover the filing fee for this application.

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: October 29, 2014

Residential Tenancy Branch

