



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPB, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it on the door of the rental unit on September 11, 2014. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

This tenancy started on November, 2010 as a 1 year fixed term tenancy and then continued on a month to month basis. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 at the start of the tenancy.

The Tenant said that he moved out of the rental unit on September 28, 2014. Further the Tenant said that it was his understanding that he had a verbal agreement with the Landlord to extend the tenancy from August 31, 2014 to the end of September, 2014.

The Landlord said that he purchased the rental unit from the previous landlord D.L. and he took possession on September 1, 2014. At that time the Landlord said the Tenant had not moved out and the Landlord said that he had no choice but to continue the tenancy until he could get an Order of Possession. The Landlord applied for an Order of Possession on September 4, 2014. The Landlord continued to say that he now has

possession so he is withdrawing his application for an Order of Possession, but he would like to recover the filing fee of \$50.00 for this proceeding.

The Landlord said the Tenant was given a 2 Month Notice to End Tenancy dated June 30, 2014 with an effective vacancy date of August 31, 2014. In addition the previous Landlord and the Tenant signed a mutual agreement to end the tenancy with an effective vacancy date of August 31, 2014. The Landlord said the Tenant did not move out on the agreed date of August 31, 2014.

The Tenant said the 2 Month Notice was not given to him until the middle July, 2014 and the Tenant supplied the previous landlord D.L. as a witness to confirm this.

Witness D.L. gave affirmed testimony that the 2 Month Notice to End Tenancy and the mutual agreement to end the tenancy were both completed, signed and received by the Tenant and the previous landlord in mid-July, 2014.

The Tenant continued to say that because there was a verbal agreement between him and the Landlord to continue the tenancy until September 30, 2014 the Landlord should not be successful in recovering the filing fee of \$50.00 from the Tenant.

The Landlord said there was no agreement to continue the tenancy as he had no choice about ending the tenancy until he had an Order of Possession.

The Tenant said they had a verbal agreement to extend the tenancy until September 30, 2014 and he has text messages to prove it. The Tenant said he did not submit the messages as evidence to support his claims.

The Landlord said he is requesting to recover the filing fee of \$50.00 from the Tenant.

The Tenant said he is not responsible for the filing fee and he is considering making an application for loss or damage against the Landlord.

Analysis

As the Landlord has possession of the rental unit and the Landlord has withdrawn his request for an Order of Possession the only issue to be decided is whether the Landlord is entitled to recover the filing fee of \$50.00 from the Tenant. In order to recover the filing fee an applicant may be successful in their application or demonstrate that the cost of the proceeding is a result of the actions of the respondent.

In this situation the Landlord said the Tenant would not vacate the rental unit on the date agreed to in the mutual agreement to end the tenancy, August 31, 2014 nor on the effective vacancy date in the 2 Month Notice to End Tenancy, August 31, 2014. As a

result the Landlord made an application for dispute resolution on September 4, 2014. This application cost the Landlord \$50.00 and he is requesting the recovery of the \$50.00 from the Tenant.

The Tenant said he had a verbal agreement with the Landlord to continue the tenancy until September 30, 2014. The Landlord said they did not have an agreement as he had no choice but to let the Tenant live in the unit until he had an Order of Possession. The Tenant has not provided any corroborating evidence that supports a verbal agreement to continue the tenancy. The burden of proving a claim lies with the person making the claim and when it is just the claimant's word against that of the respondent that burden of proof is not met. I find the Tenant has not met the burden of proof to establish a verbal agreement was done between the Landlord and Tenant to extend the tenancy to September 30, 2014. Consequently I find the Tenant was overholding in the rental unit from September 1, 2014 to September 28, 2014. Overholding is defined in the Act as **"overholding tenant"** means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended." I find that the Tenant signed a mutual agreement to end the tenancy with a vacancy date of August 31, 2014; therefore the Tenant was overholding during the month of September, 2014. As well the Tenant was aware that the tenancy was ending due to the sale of the property to a new owner who wanted possession of the unit.

Consequently I find the Landlord's application is a result of the Tenant's action of overholding and therefore I find for the Landlord and award a monetary order to the Landlord for \$50.00 representing the cost of the filing fee of \$50.00.

Conclusion

A Monetary Order in the amount of \$50.00 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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

