



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause, pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and his lawyer (collectively "landlord") and the tenant, MITS ("tenant") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant MITS attended the hearing personally and testified that he had authority to represent his brother, the other tenant, "MICS," as agent at this hearing and to settle any claims on his behalf (collectively "tenants").

At the outset of the hearing, the landlord's lawyer asked the tenant to confirm the identity and correct legal name of the tenant, MICS. During the hearing, the landlord declined the opportunity to amend his application to include the alternative name for the tenant MICS, which the landlord says is "MST."

The landlord testified that the tenants were served with a 1 Month Notice, dated November 25, 2014 ("1 Month Notice") on November 27, 2014. The landlord's father, "HCM," provided a statutory declaration, dated December 31, 2014, which confirmed a statement made by him on December 29, 2014. The statement confirms that HCM personally served the 1 Month Notice, after entering the tenants' unlocked rental unit, by leaving it on the stairs and receiving a verbal response from the tenant, MICS. The tenant testified that he received the 1 Month Notice by way of email on November 26, 2014, when he was out of town, and he was informed by the tenant, MICS, that MICS received it on December 2, 2014. Although these methods of service delivery are not permitted by section 88 of the *Act*, the tenant confirmed that both tenants received the

landlord's 1 Month Notice and reviewed the document. Based on the sworn testimony of the parties, I find that the tenants have received the landlord's 1 Month Notice and that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's application. Accordingly, I find that the landlord's 1 Month Notice has been sufficiently served for the purposes of subsection 71(2)(c) of the *Act*.

The landlord testified that he served his application for dispute resolution hearing package ("Application") on the tenants, by way of leaving it in their mailbox at the rental unit on December 31, 2014. The tenant confirmed receipt of the landlord's Application, on behalf of both tenants. Although this method of service delivery is not permitted by section 89 of the *Act*, the tenant confirmed receipt on behalf of both tenants. Based on the sworn testimony of the parties, I find that the tenants have received the landlord's Application and that there would be no denial of natural justice in proceeding with this hearing and considering the landlord's application. Accordingly, I find that the landlord's Application has been sufficiently served for the purposes of subsection 71(2)(c) of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord stated that this tenancy began on April 3, 2014, for a fixed term to end on April 2, 2015, after which it would revert to a month to month tenancy. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenants at the beginning of this tenancy and the landlord continues to retain this deposit.

The tenant testified that he vacated the rental unit approximately two weeks prior to this hearing. The landlord testified that the tenant vacated the rental unit some time ago. However, the landlord stated that he wished to obtain an order of possession against both tenants to ensure that both tenants and their possessions are removed from the rental unit.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2015, by which time the tenants will have vacated the rental unit;
2. The tenants agreed to pay the landlord \$2,200.00 for January 2015 rent, no later than 12:00 p.m. on January 15, 2015.
3. The landlord agreed to bear the cost of his own filing fee of \$50.00 for this application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties provided verbal confirmation that they agreed to the above terms. The tenant confirmed that he understood that this agreement was binding on both tenants.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants fail to vacate the rental premises by 1:00 p.m. on January 31, 2015. The landlord is provided with this Order in the above terms and the tenants must be served with this Order in the event that the tenants do not vacate the premises by 1:00 p.m. on January 31, 2015. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties and as discussed with them at the hearing, I issue a monetary Order in the landlord's favour in the amount of \$2,200.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants do not abide by the terms of the above monetary settlement. The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible after a failure to comply with the terms of the above monetary settlement. Should the tenant(s)

fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlord must bear the cost of his own filing fee of \$50.00 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: January 16, 2015

Residential Tenancy Branch

