



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession pursuant to section 55 for breach of an agreement and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord and one of two tenants/respondents ("Tenant DG") attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The teleconference continued until 11:14a.m. Tenant JM did not attend.

The landlord testified that she served both tenants with dispute resolution packages on January 21, 2015. She testified that she served Tenant DG by mail. Tenant DG confirmed his receipt of the dispute resolution package. I find Tenant DG served with the dispute resolution package. The landlord testified that she served Tenant JM by posting on his door with a witness present. She testified that, out of an abundance of caution, she also sent the package electronically. She testified that, when she was advised that Tenant JM claimed he had not received the package, she handed it to him personally on February 1, 2015. Based on the evidence submitted and pursuant to section 89(2) and 90 of the Act, I accept that Tenant JM has been deemed served with the landlord's application for an Order of Possession on January 24, 2015, the third day after this posting.

Section 89(1) of the Act does not allow for the service of an application for a monetary award by posting a notice on a tenant's door. Although there is sworn testimony that the landlord also handed the tenant a copy of the dispute resolution hearing package on February 1, 2015, this service of the package occurred too near the time of the hearing to enable me to consider the landlord's application for a monetary Order as a result of that service of the hearing package to the tenant. As the landlord did not serve the

Tenant JM with a copy of the dispute resolution hearing package in accordance with section 89(1) of the Act, I dismiss the landlord's application to recover her filing fee from Tenant JM.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant(s)?

Background and Evidence

This tenancy began November 15, 2014 and continued until February 1, 2015. The rental amount is \$1000.00. The landlord provided undisputed testimony that she does not hold a security deposit. Documentary evidence was submitted to show that the landlord and Tenant DG had signed a Mutual Agreement to End Tenancy effective February 1, 2015. That agreement noted the names of both tenants as provided on the residential tenancy agreement. Both parties testified that Tenant JM was present for the signing but that he did not sign the agreement. The landlord and Tenant DG both testified that Tenant JM is still residing in the rental unit. The landlord further testified that he had provided her with \$500.00 (1/2 month's rent) on February 1, 2015 and indicated that he has no intention of moving out. The landlord accepted \$500.00 and with a witness present, provided a receipt indicating, "for use and occupancy only" to Tenant JM. The receipt was submitted by the landlord for this hearing.

Tenant DG provided a letter on January 1, 2015 stating, "my roommate [JM] was advised December 15th that I would be giving the landlady notice to vacate on or before January 31st." Tenant DG testified that he had told Tenant JM he intended to move out and that he had given notice to the landlord.

Analysis

The landlord's application included an application for "other" or another remedy under the Act however she withdrew this portion of her application, indicating she had no further application at this time beyond an application for an Order of Possession and recovery of her filing fee with respect to this matter.

Residential Tenancy Policy Guideline No. 13 provides guidance with respect to co-tenant obligations. It states that,

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.]

Tenant DG provided both a letter and signed a Mutual Agreement to End Tenancy on January 1, 2015. Tenant JM was Tenant DG's co-tenant and is therefore required to abide by the notice to end tenancy, regardless of whether he signed the notice or agreement to end the tenancy. Further, while Tenant JM has provided \$500.00 towards February rent, the landlord provided sworn, undisputed testimony that she accepted the \$500.00 only for use and occupancy and not as an indication of a reinstatement of the tenancy or an entering into a new tenancy.

Based on the evidence of both the landlord and Tenant DG as well as the documentary evidence submitted in this matter, I find that the tenancy has ended effective February 1, 2015. Based on this finding, I issue an order of possession with respect to this rental unit in the names of both tenants.

Conclusion

I issue the landlord an Order of Possession to be effective two days after notice is served to Tenant JM. If Tenant JM and anyone else on the premises does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

For the reasons stated above, I dismiss the landlord's application to recover the filing fee from Tenant JM.

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: February 10, 2015

Residential Tenancy Branch

