



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 B.C. LTD
and [tenant name suppressed to protect privacy]

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; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend the hearing although it lasted approximately 14 minutes. The landlord's agent, SB ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the property manager for the landlord company named in this application and that he had authority to appear as its agent at this hearing.

The landlord testified that he served the tenant with the landlord's application for dispute resolution hearing package ("Application") on February 12, 2015, by way of registered mail. He provided a Canada Post receipt and tracking number as proof of service with the landlord's Application. The landlord testified that he checked the Canada Post website and confirmed that the tenant picked up and signed for the package. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on February 17, 2015, the fifth day after its registered mailing.

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 tenant?

Background and Evidence

The landlord testified that this month to month tenancy began on November 1, 2011. Monthly rent in the current amount of \$747.00 is payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant on November 1, 2011 and the landlord continues to retain this deposit. A written tenancy agreement was provided with the landlord's Application. The landlord testified that he spoke with the tenant on March 4, 2015 and she was still residing in the rental unit. The landlord stated that the tenant advised him that she did not intend to vacate the rental unit until she was served with an order of possession.

The landlord testified that a "previous hearing" before a different arbitrator occurred on January 28, 2015, after which a "previous decision" was issued on January 29, 2015. The file number for this previous hearing appears on the front page of this decision. The landlord provided a copy of this previous decision with the landlord's Application. The previous decision dismissed the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The previous decision corrected the effective move-out date on the 1 Month Notice to February 28, 2015. The landlord stated that the tenant has not vacated the rental unit in accordance with the previous decision and that the landlord is entitled to an order of possession for cause, on this basis. The landlord confirmed that he was not aware that he could request an order of possession orally during the previous hearing.

The landlord seeks an order of possession for cause, based on the 1 Month Notice, which was the subject of the previous hearing. The landlord provided a copy of the 1 Month Notice by way of facsimile after the hearing, at my request, as he did not provide a copy with the landlord's Application. I received a copy of the 1 Month Notice from the landlord and reviewed the notice prior to writing this decision. The 1 Month Notice is dated December 30, 2014, stating an effective move-out date of January 31, 2015.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend the hearing. As per the previous hearing decision made by a different arbitrator on January 29, 2015, the landlord's 1 Month Notice was upheld and the tenant's application to cancel the notice was dismissed. Accordingly, this tenancy ended on February 28, 2015, the corrected effective date as per the previous decision. Therefore, as per section 55 of the *Act*, the landlord has requested and is entitled to an order of possession against the tenant. As the tenant did not vacate the rental unit by February 28, 2015, as required, and since there is no conclusive evidence that the tenant has

vacated the rental unit at this time, the landlord is entitled to a 2 day Order of Possession against the tenant.

As the landlord was successful in his Application, he is entitled to recover the \$50.00 filing fee from the tenant.

The landlord testified that he continues to hold the tenants' security deposit of \$350.00. Although the landlord did not apply to retain this security deposit, I find that, in accordance with the offsetting provisions under section 72 of the Act, the landlord is entitled to retain \$50.00 from the tenant's security deposit in full satisfaction of the monetary award. The remainder of the tenants' security deposit, in the amount of \$300.00, is to be dealt with in accordance with section 38 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain \$50.00 from the tenant's security deposit in full satisfaction of the monetary award. The remainder of the tenants' security deposit, in the amount of \$300.00, is to be dealt with in accordance with section 38 of the Act.

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: March 09, 2015

Residential Tenancy Branch

