



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 for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by the landlord, his witness, and the female tenant. I note the landlord identified two witnesses to provide testimony regarding the service of the 1 Month Notice to End Tenancy for Cause, but that one of the witnesses was not available at the time of the hearing so he did provide any testimony.

The tenant testified that she had not received the landlord's evidence until July 6, 2015 inside of the 14 days allowed for the service of evidence by the applicant to the respondent. The landlord could not provide any confirmation as to when he served the evidence to the tenants.

Residential Tenancy Branch Rule of Procedure 3.1 requires the applicant to serve the respondent with their evidence within three days, if available, of their Application being accepted. For any evidence not available at the time the applicant filed their Application it must be served on the respondent as soon as possible or at least no later than 14 days prior to the hearing.

As the landlord cannot provide any evidence to establish that he served the respondents with his evidence within 14 days of the hearing and the tenant submits that it was received on July 6, 2015, I find the landlord has failed to comply with the requirements under Rule 3.1 and as such, I have not considered any of the landlord's documentary evidence for this decision, with the exception of the copy of the tenancy agreement and the 1 Month Notice to End Tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on May 29, 2014 for a 1 year fixed term tenancy beginning on July 1, 2014 for a monthly rent of \$980.00 due on the 1st of each month with a security deposit of \$980.00 and a pet damage deposit of \$490.00 paid;
- A copy of a 1 Month Notice to End Tenancy for Cause issued on April 28, 2015 with an effective vacancy date of May 31, 2015 citing that the tenants are repeatedly late paying rent; that the tenants or a person permitted on the residential property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk.

The landlord submits that he served the tenants with the 1 Month Notice to End Tenancy for Cause on April 28, 2015. He states that he attended the rental unit with a witness; knocked on the door several times; rang the doorbell several times and dispute hearing the tenants inside no one came to the door.

The landlord further testified that after no response came from the tenants he attached the Notice to the door at approximately 8:45 p.m. The landlord stated that another witness had watched someone open the door of the rental unit from inside at approximately 9:00 p.m. and removed the Notice from the door.

The landlord stated he later found the unopened envelope in his mailbox the next day.

The tenant testified that she had not ever received a 1 Month Notice to End Tenancy for Cause. The tenant also denied ever receiving such a package or putting in the landlord's mailbox.

The landlord's witness testified that she watched the landlord fill out the 1 Month Notice to End Tenancy for Cause and put it in an envelope. She stated she then went with the landlord to serve the Notice to the tenants. She recounted the events as described by the landlord.

The witness further testified that the landlord's other witness had been watching out of his window when they were attempting service and he later confirmed to her that he had seen someone come out of the rental unit and removed the envelope approximately 15 minutes after the landlord served it.

This witness testified that the landlord later showed her an email that he sent to the tenants advising them he had served them with the Notice by taping it to the door and that the tenants had responded to the email stating, in part, that they would not be accepting any more of the landlord's "illegal tenancy forms". The landlord later read these emails into evidence.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent; or
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position.

In this case, because the tenant disputes receiving the Notice, the burden is on the landlord to provide additional evidence to support his claim that he served the tenants with the 1 Month Notice. I find the landlord's witness provided credible testimony that confirms specific details of the service as described by the landlord. As such, I find the landlord has established that the Notice was served to the tenants on April 28, 2015 as described.

I also accept that tenants did not open the package but rather put it back in the landlord's mailbox. I find that failing to accept the package and returning it the landlord constitutes a deliberate attempt on the part of the tenants to avoid service.

As such, I find the landlord had served the tenant's with a 1 Month Notice to End Tenancy for Cause on April 28, 2015 and the tenants had 10 days from that date to file an Application for Dispute Resolution seeking to cancel the Notice. As the tenants did not file such an Application I find that the tenants are conclusively presumed to have accepted the tenancy ended in accordance with the Notice, pursuant to Section 47(5).

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 16, 2015

Residential Tenancy Branch

