



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 landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both landlords appeared. The tenant appeared. The tenant was assisted by two advocates. The landlord elected to call two witnesses: LB and VE.

The landlord JZ testified that the landlords engaged the services of a bailiff to serve the dispute resolution package, including all evidence before me. The landlord JZ testified that the bailiff served the dispute resolution package on a Monday within three days after filing. The tenant did not dispute receiving the dispute resolution package and evidence. On the basis of this evidence, I am satisfied that the tenant was served with notice of this application pursuant to section 89 of the Act.

The landlord JZ testified that the landlords personally served the tenant with the 1 Month Notice on 27 April 2015. The tenant did not dispute service. On the basis of this evidence, I am satisfied that the tenant was served with the 1 Month Notice pursuant to section 88 of the Act.

Background

The tenant occupies the upper level of a home. The lower level of the home is occupied by the witness LB.

On 27 April 2015, the landlords served the tenant with the 1 Month Notice. The 1 Month Notice set out an effective date of 31 May 2015. The 1 Month Notice set out that it was

being given as the tenant or persons permitted on the residential property by the tenant had unreasonably disturbed or significantly interfered with another occupant of the residential property or the landlord. The landlord JZ testified that the 1 Month Notice was issued in relation to noise created by the tenant and his guests that was disturbing the downstairs occupant(s).

The landlord JZ testified that when the 1 Month Notice was served, the tenant asked if he could stay until 31 July 2015 because he wished to attend a family reunion. The landlord JZ testified that the landlords agreed that the tenant could stay until 31 July 2015.

The landlord JZ testified that on 13 June 2015, the landlords personally served the tenant with a second 1 Month Notice that set out the new effective date of 31 July 2015 (the Second Notice). The landlord JZ testified that when the landlords attempted to serve the tenant with the Second Notice the tenant crumpled up the notice and threw it. The tenant denies receiving the Second Notice. I was not provided with a copy of the Second Notice.

The landlords accepted rent for June and July.

The tenant's advocate raised the issue of waiver. I explained to the parties the issue of waiver. In particular, I read the relevant portions of *Residential Tenancy Policy Guideline*, "11. Amendment and Withdrawal of Notices".

Because of my concerns with waiver of the 1 Month Notice by the conversation on 27 April 2015 and the issuance of the Second Notice, I expressed my concern that the parties were going to end up back before the Residential Tenancy Branch in a subsequent application. Depending on my decision, the subsequent application may have been based on the Second Notice or a different notice. I asked the parties if they wished to consider a settlement. The parties took the opportunity to discuss terms under which the tenancy would end. The landlords and tenant reached an agreement.

Analysis

Pursuant to section 63 of the Act, an 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 this dispute.

During this hearing, the parties reached an agreement to settle their dispute under the following final and binding terms:

1. The landlords agreed to withdraw their application.
2. The landlords agreed to withdraw the 1 Month Notice and the Second Notice.
3. The tenant agreed to provide possession of the rental unit to the landlords on or before one o'clock in the afternoon on 30 September 2015.

Each party confirmed that he understood the terms of the agreement. Each party agreed that these particulars comprise the full and final settlement of all aspects of this dispute. Each party agreed with the terms of this settlement.

Conclusion

The landlords' application is withdrawn. The landlords' 1 Month Notice is cancelled. The landlords' Second Notice is cancelled.

The attached order of possession is to be used by the landlords if the tenant does not vacate the rental premises in accordance with their agreement. The landlords are provided with this order in the above terms and the landlords should serve the tenant with this order so that it may enforce it in the event that the tenant does not vacate the premises by the time and date set out in their agreement. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 22, 2015

Residential Tenancy Branch

