



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MT. SEYMOUR LIONS HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNSD, 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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 0942 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service

The agent testified that the landlord served the tenant with the dispute resolution package on 10 September 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. As well, the agent provided the dispute resolution package to the tenant in person on 14 October 2015.

The purpose of this application is to remove the tenant for failure to abide by a clause of her tenancy agreement that prohibits absences of longer than three months. The agent testified that the tenant did not appear to be living in the rental unit, but rent was being paid, the tenant's belongings were in the rental unit and mail was being retrieved.

Paragraph 89(1)(c) of the Act requires service to the address at which the tenant "resides". I find that for the purpose of this provision "resides" is broader than daily occupation and includes using the dwelling in the manner that the tenant did, that is,

maintaining the rental unit as a dwelling available to her and attending at the rental unit with some regularity not to sleep there, but to check in on the unit. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on 15 July 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The landlord also posted the 1 Month Notice to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with the 1 Month Notice pursuant to sections 88 and 90 of the Act.

Amendments to Landlord's Application

At the hearing the agent indicated that she wished to amend the landlord's application to remove the request to keep the security deposit. The agent also indicated that in the event I granted an order of possession, as a result of discussions with the tenant and her son, the landlord requested an order dated 31 January 2016.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In considering an amendment request, the key criterion is prejudice to the respondent. In this case, the proposed amendments do not prejudice the tenant at all. As such, the application is amended as requested.

Issue(s) 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

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 November 2009. Rent is geared to income. I was provided with a copy of the tenancy agreement, which the parties entered into on 14 October 2009. Clause 16 of that agreement reads in part:

Notwithstanding the timely payment of rent, absence from the Premises for three consecutive months or longer is cause for termination of this Tenancy Agreement.

On or about 13 July 2015, the landlord inspected the rental unit and determined that all the tenant's belongings were there, but there did not appear to be daily occupation of the rental unit. The tenant was picking up her mail, but there was no food in the fridge.

On 15 July 2015, the landlord served the 1 Month Notice to the tenant. The 1 Month Notice was dated 9 July 2015 and set out an effective date of 31 August 2015. The 1 Month Notice was given as the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The agent testified that the tenant and her son indicated that they did not intend to attend this hearing.

Analysis

On 15 July 2015, the landlord served the tenant with the 1 Month Notice by registered mail. The tenant is deemed to have received this mailing on 20 July 2015. . Paragraph 47(1)(h) of the Act sets out that a landlord may end a tenancy where the tenant has failed to comply with a material term and the tenant has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Pursuant to subsection 47(5) of the Act, a tenant is conclusively presumed to have accepted a tenancy ends where the tenant does not apply for dispute resolution within ten days of receiving the notice.

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit by that date.

The tenant did not apply for dispute resolution within ten days of receiving the 1 Month Notice. Accordingly, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, that is, 31 August 2015. The landlord is entitled to an order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

The landlord is provided with a monetary order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession effective 31 January 2016. Should the tenant(s) 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: October 15, 2015

Residential Tenancy Branch

