



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNC, FF
For the landlord: OPC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for an order cancelling a 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit pursuant to the Notice and for recovery of the filing fee paid for this application.

The landlord attended the hearing; the tenant did not attend.

The landlord submitted that she served the tenant with her application for dispute resolution by registered mail on August 16, 2015, and that the registered mail envelope was returned to her, marked "Refused by addressee". The landlord supplied a copy of the returned registered mail envelope.

Based upon the landlord's submissions, I accept that the tenant was served with the landlord's application in a manner complying with section 89(1) of the Act, and the hearing proceeded on the landlord's application in the tenant's absence.

Thereafter the landlord was provided the opportunity to present her evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Procedural matter- In the absence of the tenant to present his claim, pursuant to section 10.1 of the Dispute Resolution Rules of Procedure (Rules), I dismiss the tenant's application, without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit pursuant to the Notice and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this tenancy began in August 2010.

In support of her application, the landlord submitted that the tenant was served the Notice on July 16, 2015, by leaving it with the tenant on that day.

The Notice explained that the tenant had 10 days to dispute the Notice. It also explained that if the tenant did not file an application to dispute the Notice within 10 days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The effective move out date listed on the Notice was August 31, 2015.

The tenant's application in dispute of the Notice was filed on July 31, 2015.

The cause as stated on the Notice alleged that the tenant had not complied with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord's relevant evidence included, but was not limited to, a copy of the Notice and copies of bylaw infraction notices.

Analysis

I find the landlord submitted sufficient evidence to substantiate that the tenant was properly served a 1 Month Notice for Cause on July 16, 2015, pursuant to section 47 of the Act, and had 10 days, or until July 27, 2015 in this case as the 10th day fell on a Sunday, to make an application to dispute the Notice; instead the tenant applied to dispute the Notice on July 31, 2015. Therefore pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, in this case July 31, 2015, and must move out of the rental unit.

I therefore grant the landlord's application for an order of possession for the rental unit effective 2 days after service of the order upon the tenant in any way recognized under section 88 of the Act. The order of possession is enclosed with the landlord's Decision.

The order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court if it should become necessary. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Pursuant to section 72(1) of the Act, I also grant the landlord recovery of the filing fee paid for her application and a separate monetary order for the amount of \$50.00 is enclosed with her Decision. To be effective the monetary order must be served upon the tenant in any way recognized under section 88 of the Act.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

In the alternative, the landlord may withhold the amount of \$50.00 from the tenant's security deposit in satisfaction of her monetary award and the monetary order in that instance is no longer of force or effect.

Conclusion

The landlord's application for an order of possession for the rental unit is granted.

The tenant's application has been dismissed due to his failure to attend the hearing and due to having granted the landlord's application.

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: October 7, 2015

Residential Tenancy Branch

