



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KEY PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, 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;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0941 in order to enable the tenants 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.

The agent testified that the landlord served the tenants with the original dispute resolution package on 30 November 2015 by registered mail. This mailing was sent to the rental unit at which the tenants were still residing. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Landlord's Amendment

On 12 January 2016 the landlord provided a package of evidence to the Residential Tenancy Branch. Contained within this package was an amendment to the landlord's application.

The agent testified that this package was not served to the tenants. The agent testified that on 7 December 2015 the landlord received the keys to the rental unit by registered

mail. The agent determined at this time that the unit had been abandoned. The agent testified that the landlord was unable to serve its amended dispute resolution package to the tenants as they were no longer residing at the rental unit and had not provided a forwarding address.

Pursuant to rule 4.6 of the *Residential Tenancy Branch Rules of Procedure*, the amended application for dispute resolution must be served to the respondent. As the landlord has not served this amendment, the amendment is not properly before me as the tenant did not have notice.

Pursuant to subsection 60(1) of the Act the landlord has two years from the end date of the tenancy to commence an application to recover amounts from the tenants. If the landlord is able to find a method by which to serve the tenants, the landlord may refile for the relief sought by way of the amended application.

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 tenants?

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 9 April 2015. The parties entered into a written tenancy agreement on 7 April 2015. Monthly rent of \$2,400.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$1,200.00.

On 27 October 2015, the landlord served the tenants with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by posting that notice to the tenants' door. The 1 Month Notice set out an effective date of 30 November 2015. The 1 Month Notice set out that it was being given as:

- the tenant or person permitted on the property by the tenant 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; or
 - put the landlord's property at significant risk.

On or about 3 November 2015, the landlord received a letter from counsel acting on behalf of the tenants. The letter set out that the tenants would vacate the rental unit by 30 November 2015. The tenants have not filed to cancel the 1 Month Notice.

The agent testified that the tenants' rent payment for 1 December 2015 was returned incomplete. On or about 7 December 2015, the landlord received the keys to the rental unit by registered mail.

Analysis

As the tenants have returned possession of the rental unit to the landlord, there is no need for me to consider the landlord's application for an order of possession as the issue is now moot.

Subsection 72(1) permits an arbitrator to make a discretionary award of repayment of a filing fee from one party to another. Generally this repayment is ordered where a party has been successful in its application. As the tenants provided notice to the landlord to vacate the rental unit on or before the effective date of the 1 Month Notice, I decline to award recovery of the filing fee to the landlord.

Conclusion

The landlord's application (as filed on 26 November 2015) is dismissed without leave to reapply.

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: January 21, 2016

Residential Tenancy Branch

