



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALAWARE HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR OPC MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid rent or utilities and for cause, for a monetary order for unpaid rent or utilities, for damages to the unit, site or property, to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

The tenant and an agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that he received the landlord’s documentary evidence and that he had the opportunity to review that evidence prior to the hearing. The tenant confirmed that he did not serve any documentary evidence in response to the landlord’s application. I find the tenant was sufficiently served in accordance with the *Act* as a result.

Preliminary and Procedural Matter

During the hearing, the agent decided to waive the unpaid rent owing and the recovery of the cost of the filing fee as the agent stated that the most important issue was the return of possession of the rental unit. As a result, I have only considered the landlord’s application for an order of possession at this proceeding.

Issue to be Decided

- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2013. Monthly rent in the amount of \$825.00 is due on the first day of each month. A security deposit of \$412.50 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 12, 2014, and a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated October 19, 2015. The tenant confirmed receiving both the 10 Day Notice and the 1 Month Notice and did not apply to dispute either Notice to End Tenancy. The agent stated that he would be agreeable to an order of possession with an effective vacancy date of January 31, 2016 at 1:00 p.m.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – Although the 10 Day Notice dated June 12, 2014 was not disputed by the tenant, there was no dispute that the landlord continued to accept monthly rent from the tenant for 18 months after the 10 Day Notice was issued. As a result, I cancel the 10 Day Notice dated June 12, 2014 as I find that the landlord reinstated the tenancy by accepting rent for the past 18 months without issuing any documentation to the tenant that the tenancy was not being reinstated. As a result, I find the 10 Day Notice dated June 12, 2014 is of no force or effect.

1 Month Notice – The tenant confirmed that he did not dispute the 1 Month Notice dated October 19, 2015. As a result, and in accordance with section 47 of the *Act*, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective vacancy date which automatically corrects pursuant to section 53 of the *Act* to November 31, 2015. As a result, I find the tenancy ended on November 31, 2015 and that the tenant has been overholding in the rental unit since that time. Given the above, **I grant** the landlord an order of possession effective **January 31, 2016 at 1:00 p.m.** pursuant to section 55 of the *Act*.

I note that the agent waived all unpaid rent and the cost of the filing fee.

Conclusion

The landlord's application has merit.

Although the 10 Day Notice was cancelled, the 1 Month Notice is valid and the landlord has been granted an order of possession effective January 31, 2016 at 1:00 p.m. The order of possession must be served on the tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 15, 2016

Residential Tenancy Branch

