



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 690324 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the Landlord: OPC MNR MNSD MNDC FF
For the Tenant: CNC

Introduction

This hearing dealt with cross-applications by the parties for Applications for Dispute Resolution under the *Residential Tenancy Act* (the “Act”). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated January 31, 2016. The landlord applied for an order of possession based on a 1 Month Notice, for a monetary order for unpaid rent or utilities, to retain all or part of the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”) attended the teleconference hearing which began promptly this date at 11:00 a.m. Pacific Time on Thursday, March 31, 2016 by conference call as per the Notice of a Dispute Resolution Hearing provided to both parties. The line remained open while the phone system was monitored for 15 minutes and the only participant who called into the hearing during this time was the agent for the landlord.

After the ten minute waiting period, the tenant’s application was **dismissed in full, without leave to reapply**.

The hearing continued with consideration of the landlord’s application. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The agent provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenant by registered mail on February 29, 2016. The agent provided a registered mail tracking number in evidence and confirmed that the name and address on the registered mail

package matched the name of the tenant and the address of the tenant. The agent testified that the tenant continues to occupy the rental unit. According to the online registered mail website information the tenant signed for and accepted the registered mail package on March 2, 2016. As a result, I find that the tenant was served as of March 2, 2016, the day the tenant signed for and accepted the registered mail package. Based on the above, I am satisfied the tenant has been sufficiently served in accordance with the *Act*.

Preliminary and Procedural Matters

During the hearing, the agent testified that since the landlord's application was filed, the tenant did pay rent for the month of March 2016 and that the landlord was still seeking an order of possession and the recovery of the cost of the filing fee. The agent requested to withdraw the unpaid rent portion of the landlord's application which I have permitted as I find there is no prejudice to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on May 1, 2015. Monthly rent of \$525.00 is due on the first day of each month. The tenant paid a security deposit of \$262.50 at the start of the tenancy which the landlord continues to hold.

The agent stated that on January 31, 2016 he posted the 1 Month Notice dated January 31, 2016 on the tenant's door. Section 90 of the *Act* deems that the 1 Month Notice is served three days later on February 3, 2016. Although the effective vacancy date listed on the 1 Month Notice indicates February 28, 2016, pursuant to section 53 of the *Act*, the effective vacancy automatically correct to March 31, 2016.

As the tenant did not attend the hearing and the tenant's application has been dismissed, the 1 Month Notice is considered to be undisputed by the tenant.

The agent requested that if he was entitled to the recovery of the cost of the filing fee, that he would prefer that it is deducted from the security deposit versus receiving a separate monetary order.

Analysis

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

1 Month Notice – The tenant continues to occupy the rental unit. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must grant** to the landlord **an order of possession of the rental unit if**

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, **dismisses the tenant's application** or upholds the landlord's notice.

[my emphasis added]

As the tenant failed to attend the hearing and the tenant's application has been dismissed, the 1 Month Notice is considered undisputed by the tenant. Therefore, I uphold the 1 Month Notice and grant the landlord an order of possession **effective two (2) days** after service on the tenant.

As the landlord's application was successful, I grant the landlord the recovery of the **\$100.00** filing fee and pursuant to section 72 of the *Act*, I authorize the landlord to deduct \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. As a result, I find the tenant's security deposit balance is \$162.50.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.
The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days from service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the cost of the filing fee. The tenant's security deposit balance is \$162.50.

This decision is final and binding on the parties, except as 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: April 1, 2016

Residential Tenancy Branch

