



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on May 24, 2016. The Landlord filed seeking to obtain an Order of Possession for cause and to keep the security deposit.

Upon review of the Landlord's application for Dispute Resolution the Landlord indicated he had not intended to request to keep the security deposit on this application and he withdrew that request.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement. The Landlord stated he was agent/acting landlord on behalf of his father who was currently in the hospital. I accept the Landlord's submission that he had authority to act as agent for his father and therefore, he meets the definition as landlord, pursuant to section 1 of the Act.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. The Landlord provided affirmed testimony that the Tenant was served notice of this application and this hearing on May 24, 2016, when they were posted to the Tenant's door at 11:25 a.m., in the presence of a witness.

Based on the undisputed submissions from the Landlord, I find that the Tenant was sufficiently served with the application for Dispute Resolution and Notice of this hearing, pursuant to Section 89(2) of the Act; and I proceeded to hear the undisputed evidence of the Landlord, in the absence of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The Landlord testified that the Tenant had a verbal tenancy agreement that began on March 1, 2015. Rent of \$850.00 was payable on the first of each month and on March 1, 2015 the Tenant paid \$400.00 as the security deposit.

The Landlord submitted evidence that the Tenant had been having loud parties. In addition, there was evidence of a police file concerning the Tenant attempting assault upon the Landlord which allegedly occurred on April 1, 2016.

The Landlord testified he personally served the Tenant the 1 Month Notice on March 18, 2016. The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord

The Landlord testified that the Tenant continues to reside in the rental unit and has not disputed the Notice. As such, they are requesting an Order of Possession for as soon as possible.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Upon review of the 1 Month Notice to End Tenancy issued March 18, 2016, I find the Notice was served upon the Tenant in a manner that complies with the Act. As rent is payable on the first of each month, the effective date of the Notice automatically corrects to **April 30, 2016**, pursuant to section 53 of the Act.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than March 28, 2016. At the time the Landlord filed their application for an Order of Possession on May 24, 2016, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that 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.

Based on the above, I find the Landlord submitted sufficient evidence to prove the Tenant is conclusively presumed to have accepted the tenancy ended on April 30, 2016 and the Tenant must now vacate the rental unit, pursuant to section 47 of the *Act*. Accordingly, I grant the Landlord's application.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Landlord has been successful with his application and has been granted an Order of Possession.

This decision is final, legally binding, 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: June 27, 2016

Residential Tenancy Branch