



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenant.

The Landlord and the Landlord’s grandmother appeared for the hearing and provided affirmed testimony. The Landlord was allowed to submit a copy of the notice to end tenancy into evidence after the hearing concluded as this was not before me at the time of the original hearing. I allowed this evidence to be provided pursuant to Rules 3.18 and 3.19 of the Residential Tenancy Branch Rules of Procedure as the Tenant would have been aware of the existence of this evidence prior to the hearing. The Tenant failed to appear for the 36 minute duration of the hearing and did not provide any evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord. The Landlord testified he served the Tenant personally with a copy of the Application and the Notice of Hearing documents a couple of days later after he had received these documents from the Residential Tenancy Branch on July 15, 2016. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”). The hearing continued with the undisputed evidence of the Landlord and the witness.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that this oral tenancy started two years ago. No written tenancy agreement was completed and rent under this tenancy is payable by the Tenant in the amount of \$600.00 on the first day of each month. The Landlord did not request a

security deposit and confirmed that the tenancy was for a basement suite of his home and that the Tenant and his family have exclusive use of the rental unit.

The Landlord testified that the Tenant had been habitually late paying rent and caused disturbances during this tenancy. As a result, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on May 4, 2016. The Notice provided into evidence shows a vacancy date of June 4, 2016. The Notice was issued to the Tenant for because the Tenant had been repeatedly late paying rent and had significantly interfered with and caused an unreasonable disturbance to the Landlord. The Landlord provided a Proof of Service document which shows that the Notice was personally served to the Tenant on May 4, 2016. The Tenant signed the Proof of Service document acknowledging receipt of the Notice. The Landlord's grandmother also testified to this method of service during the hearing. The Landlord testified the Tenant did not dispute the Notice. The Landlord confirmed that the Tenant was not in rental arrears but had not moved out pursuant to the vacancy date of the Notice and this was the reason why he was applying to end the tenancy. The Landlord confirmed that for July and August 2016 rent, the Tenant was verbally informed that he and his family were still required to vacate the rental unit even though they were still accepting rent.

Analysis

The 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, I find that the Landlord and Tenant engaged into a month to month tenancy which established rent payable in the amount of \$600.00 on the first day of each month.

I have examined the Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I find that the vacancy date on the Notice does not comply with Section 47(2) of the Act as it does not allow for one clear rental month before the Notice becomes effective. However, the vacancy date of June 4, 2016 is corrected to June 31, 2016 pursuant to Section 53 of the Act. I accept the oral testimony of the Landlord and witness, and the Proof of Service document, that the Notice was personally served and received by the Tenant pursuant to Section 88(a) of the Act.

Section 47(4) of the Act allows a tenant to dispute a Notice by making an Application within ten days of receiving the Notice. There is no evidence before me to indicate the

Tenant applied to dispute the Notice. Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date. Therefore, as the Tenant failed to make an Application pursuant to the Act and the Notice, I find the tenancy ended on the corrected vacancy date of the Notice, June 31, 2016. However, the Tenant still occupies the rental unit. Therefore, the Landlord's request for an Order of Possession is granted.

As the corrected vacancy date of the Notice has now passed, but the Tenant is not in any rental arrears, the Landlord is entitled to an Order of Possession. As the Landlord accepted rent for the end of August 2016, which is the date of this hearing, the Order of Possession is effective two days after it is served on the Tenant. This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. The Tenant may be held liable for costs associated with the enforcement of the Order of Possession.

Since the Landlord has been successful in this Application, I also grant the \$100.00 filing fee for the cost of having to make this Application pursuant to Section 72(1) of the Act. The Landlord is issued with a Monetary Order for this amount. This order must be served to the Tenant and may then be enforced through the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make voluntary payment.

Conclusion

The Tenant did not dispute the Notice and still occupies the rental unit. The Landlord is granted a two day Order of Possession. The Landlord is issued with a Monetary Order to recover the filing fee from the Tenant. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 31, 2016

Residential Tenancy Branch