



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 scheduled in response to the landlords' Application for Dispute Resolution, in which the landlord has requested an order of possession based on a one month Notice to end tenancy for cause issued on September 8, 2016 and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on September 28, 2016 copies of the application for dispute resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the application. A Canada Post tracking number and receipt was provided as evidence of service. The landlord said the documents were accepted by the tenant.

I find that these documents are deemed to have been served on the fifth day after mailing in accordance with section 89 and 90 of the Act.

The landlord saw the tenant one hour prior to the hearing and again provided the tenant with the dialing instructions for the conference call hearing.

The tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

The tenancy commenced on August 1, 2012. Rent is due on the first day of each month. The landlord is holding a security deposit in the sum of \$187.50. A copy of the tenancy agreement was supplied as evidence.

The landlord stated that on September 8, 2016 a one month Notice to end tenancy for cause was posted to the tenants' door. Service occurred at 1:25 p.m. with a witness present. Witness U. P. signed a proof of service document, confirming service.

The Notice had an effective date of October 31, 2016. The Notice provided one reason; that the tenant or the tenants' guests have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Notice provided the tenant with instructions that the tenant must respond to the Notice or be evicted. The Notice indicated that tenant had 10 days to dispute the Notice and that if the tenant failed to dispute the Notice the tenant was presumed to have accepted the Notice and must move out of the rental unit by the effective date of the Notice.

Analysis

Section 90 of the Act stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. Therefore, I find that the tenant received the Notice to end tenancy on September 11, 2016.

Section 47(1) of the Act stipulates that a one month Notice ending tenancy is effective 30 days after the Notice is given; prior to the day rent is due. As the tenant is deemed to have received this Notice on September 11, 2016, I find that the earliest effective date of the Notice is October 31, 2016.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending tenancy that required the tenant to vacate the rental unit on October 31, 2016, pursuant to section 47 of the Act.

Section 46 of the Act stipulates that a tenant has 10 days from the date of receiving the Notice ending tenancy to dispute the Notice by filing an Application for Dispute Resolution. In the circumstances before me I have no evidence that the tenant exercised the right to dispute the Notice. Therefore, pursuant to section 47(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice; October 31, 2016.

As the landlords' claim has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord confirmed the filing fee could be deducted from the security deposit held in trust. Pursuant to section 72 of the Act, I find that the landlord is entitled to retain \$100.00 from the security deposit in satisfaction of the filing fee cost. The landlord is now holding a security deposit in the sum of \$87.50.

The landlord has been granted an order of possession that is effective two days after service to the tenant. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Conclusion

The landlord is entitled to an order of possession.

The landlord may retain \$100.00 from the security deposit in satisfaction of the filing fee cost.

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: November 18, 2016

Residential Tenancy Branch