



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55.

Both parties attended the hearing by conference call and provided affirmed testimony. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated July 1, 2015. The monthly rent is \$1,300.00 payable on the 1st day of each month and a security deposit of \$600.00 was paid.

The landlord stated that the tenants were served with the 1 Month Notice dated October 5, 2016 in person on October 5, 2016. The tenant, H.W. provided affirmed testimony that she was served in this manner by the landlord on October 5, 2016. The tenant,

H.W. then provided conflicting and contradictory testimony that she was not served by the landlord with the 1 Month Notice. The tenant, H.W. stated that the 1 Month Notice was given to her in person as claimed by the landlord, but that after reading it she refused to keep it and returned it to the landlord. The tenant, H.W. stated that she did not agree with the reasons for cause listed on the notice. The landlord confirmed this stating that after the tenant returned the 1 Month Notice to him, he then served it via Canada Post Registered Mail on October 7, 2016. The tenants disputed this stating that no Notice was received. The landlord submitted in support of this claim a copy of the Canada Post Registered Mail Customer Receipt. Both parties consented to a review of the Canada Post Website which states that the package was received for processing on October 7, 2016, then out for delivery where a notice card was left on October 11, 2016 for the tenants to pick up the package. On October 27, 2016 a final notice card was left for the tenants to pick up the package or that it would be returned to the sender within 10 days. On November 8, 2016 Canada Post deemed the package as unclaimed and returned it to the landlord. I find based upon the evidence of both parties that I prefer the evidence of the landlord over that of the tenants. The tenants provided conflicting and contradictory evidence regarding service of the 1 Month Notice. The landlord provided consistent and supported evidence that the 1 Month Notice was properly served to the tenants. Although the tenants failed to claim the copy of the 1 Month Notice, I find that the tenants were deemed served 5 days later after October 7, 2016 as per section 90 of the Act.

The 1 Month Notice sets out an effective end of tenancy date of November 2, 2016. Both parties were informed that as the tenants were deemed served on October 7, 2016 the effective end of tenancy date on a 1 Month Notice is corrected to November 30, 2016. The 1 Month Notice sets out 5 reasons for cause as:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.
- Rental unit/site must be vacated to comply with a government order
- Non-compliance with an order under the legislation within 30 days after the tenant received the order of the date in the order.

The 1 Month Notice also notes in the details:

Allways every month late for rent, sublet + unreasonable # people.

Analysis

Pursuant to section 47 of the Act, a landlord may end a tenancy if at least one of the reasons set out in the notice is met.

In this case, the tenants were deemed served with the 1 Month Notice dated October 5, 2016 on October 12, 2016 as per section 90 of the Act.

The tenants failed to make an application to dispute the 1 Month Notice pursuant to subsection 47(4) of the Act within ten days of receiving the 1 Month Notice. In accordance with subsection 47(5) of the Act, the tenants' failure to take action within ten days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by the corrected date of November 30, 2016. As that has not occurred, I find that the landlord entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

Conclusion

The landlord is granted an order of possession.

This decision 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: December 08, 2016

Residential Tenancy Branch