



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened to deal with an application by the landlord pursuant to the *Residential Tenancy Act* (the “Act”). The landlord’s application, received by the Residential Tenancy Branch (“RTB”) on December 19, 2016, is for an order of possession and authorization to recover the filing fee for this application.

The relief sought by the landlord is based on a 1 Month Notice to End Tenancy for Cause dated October 5, 2016, with an effective date of November 30, 2016 (the “1 Month Notice”). At an earlier time the tenant applied to dispute the 1 Month Notice. A hearing was held on December 13, 2016. Another arbitrator found that the landlord had cause to end the tenancy and dismissed the tenant’s application. The file number for that decision, issued December 16, 2016, is reproduced on the cover sheet of this decision.

The arbitrator in the prior decision did not grant the landlord an order of possession because the 1 Month Notice was not in evidence and the arbitrator could not confirm that it met the requirements of s. 52 of the Act.

Accordingly, the only substantive question before me is whether the 1 Month Notice complies with the Act such that the landlord is entitled to an order of possession.

The landlord attended the hearing. As stated, the tenant did not attend. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the tenant did not attend the hearing, and although the tenant submitted responsive evidence, service of the landlord’s application and the notice of hearing and associated evidence was considered. The landlord provided affirmed testimony that she sent these by Canada Post Registered Mail on December 19, 2016 to the rental unit address. A copy of the Canada Post receipt and address slip were provided by the landlord. I

accept that the landlord served the tenant with these materials and, pursuant to s. 90 of the Act, the tenant is deemed to have received them five days after they were mailed. I also note that the tenant submitted copies of the landlord's application and the notice of hearing setting it down in the package he submitted to the RTB.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the filing fees for this application from the tenant?

Background and Evidence

As set out in the previous decision, the arbitrator at the December 13, 2016 hearing advised the parties that a copy of the 1 Month Notice was required by the end of the working day. The landlord agreed to fax the 1 Month Notice to the RTB.

The landlord has submitted a document called "Communication Log" recording fax transmissions. It does not establish that she provided the 1 Month Notice to the RTB on the date of the hearing as it does not record any faxes as having been sent on that day, and none of the fax numbers for any of the entries appear to be for the RTB. Both the landlord and the tenant submitted a copy of the 1 Month Notice in advance of this hearing, however.

The landlord testified that the tenant remains in the unit and has paid rent for January but that she advised him by email that she was accepting it for use and occupancy only. The December 16, 2016 decision states that the tenant remitted a security deposit of \$850.00 at the beginning of the tenancy.

Although the tenant did not attend the hearing, he submitted evidence in response to the application. It is difficult to know why the tenant submitted evidence without hearing his submissions, but most of it appears to be responsive to the question of whether the landlord had cause to end the tenancy and whether the tenant was actually served with the landlord's evidence for the prior hearing. The tenant is advised that those issues are no longer open for dispute as they have already been decided.

Analysis

Section 55(1) requires that the landlord's notice to end comply with s. 52. Section 52 of the Act states as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- . . .
- (e) when given by a landlord, be in the approved form.

Based on the above and my review of the 1 Month Notice that is now in evidence, I find that the Notice complies with the requirements of s. 52.

As set out above, the tenant's application to cancel the 1 Month Notice has already been dismissed. Accordingly, that notice stands and the tenancy ended on its effective date: November 30, 2016. As a result the tenant was obligated to vacate the rental unit on that date.

As has also been set out above, I am unable to vary the finding in the previous decision that the landlord had established grounds to end the tenancy. Therefore, in order to give effect to the end of the tenancy and have the tenant comply with the finding that the tenancy has ended, I grant the landlord an order of possession pursuant to section 62(3) of the Act.

As the tenant has paid rent for January, accepted by the landlord for use and occupancy only, the tenant is required to vacate the rental unit by 1:00 pm on January 31, 2017.

Conclusion

The landlord's application is allowed.

I grant an order of possession to the landlord effective at 1:00 pm on January 31, 2017. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord's application is successful, I grant the landlord the cost of the filing fee in the amount of \$100.00 pursuant to s. 72(1) of the Act. I authorize the landlord to retain

\$100.00 pursuant to s. 72(2)(b) of the *Act* from the security deposit in full satisfaction of the landlord's recovery of the \$100.00 filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 19, 2017

Residential Tenancy Branch