



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FF, OLC

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “*Act*”).

The tenant seeks:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord seeks:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The site administrator primarily spoke for the corporate landlord (the “landlord”).

The landlord testified that he served the landlord’s Application for Dispute Resolution dated January 25, 2017 on that same date by posting on a conspicuous place on the rental unit. The tenant confirmed receipt of the landlord’s application. I find that the landlord’s application and evidence were duly served on the tenant in accordance with sections 88 and 89 of the *Act* on January 28, 2017, three days after posting.

Preliminary Issue – Service of the Tenant’s Application for Dispute Resolution

Section 59(3) of the *Act* and Rule 3.1 of the Rules of Procedure establishes that a person who makes an application for dispute resolution must give a copy of the application to the other party.

The tenant testified that after filing the tenant's Application for Dispute Resolution with the Residential Tenancy Branch (the "RTB") on January 18, 2017 he took no further action to serve the tenant's application on the landlord. The tenant testified that he believed that it was the responsibility of the RTB to serve the tenant's application on his behalf. The landlord testified that he has not received the tenant's application.

The tenant has not served the landlord in a manner required by section 89(1) of the *Act*. I dismiss the tenant's application as I am not satisfied that the landlord was served with the tenant's application for dispute resolution.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recovery of filing fees for the application from the tenant?

Background and Evidence

The parties agreed on the following facts. This month-to-month tenancy began in March, 2015. There are two tenants listed on the written Tenancy Agreement. The applicant is one of the tenants. The current monthly rent is \$1,286.25 due on the first of the month. There is a security deposit of \$625.00 which was paid to the landlord at the start of the tenancy and is still held by the landlord.

On December 21, 2016 the other tenant MN gave written notice to the landlord to terminate this tenancy on January 31, 2017. The tenant testified that MN was not authorized to end the tenancy on his behalf. The tenant said that MN has moved out but the tenant wishes to continue the tenancy.

The landlord testified that any monies paid by the tenant since January 31, 2017 have been accepted for use and occupancy only. The landlord testified that he is showing the rental unit to prospective tenants and has repeatedly informed the tenant that the tenancy has ended.

Analysis

The tenancy agreement submitted into evidence lists both the applicant and MN as tenants. When two or more people rent the same property under one agreement they are considered co-tenants.

Residential Tenancy Policy Guideline 13 sets out the rights and responsibilities of co-tenants.

If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement.

I find that the written notice issued by the tenant MN ended the tenancy for both tenants. I accept the landlord's testimony that a new tenancy has not been created, that any rent payment has been accepted for use and occupancy only and that the landlords are actively showing the rental unit to prospective tenants. Accordingly, I find that the tenancy ended on the effective date of MN's notice, January 31, 2017. I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the tenant's notice has passed, I issue a 2 day Order of Possession.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 from the tenant's \$625.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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.

The tenant's application is dismissed without leave to reapply.

I order that the landlord retain \$100.00 of the tenant's security deposit in satisfaction of the monetary order.

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: February 16, 2017

Residential Tenancy Branch