



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEAK PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, OPB, CNC, MNDC, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for landlord's use pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord provided direct testimony that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 31, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per sections 88 and 89 of the *Act*. The landlord also clarified that he was not aware of the tenants' application as no service was made the tenants. As such, I accept the undisputed affirmed evidence of the landlord and find that the tenants' application for dispute was not properly served as per sections 88 and 89 of the *Act* and that it is dismissed for lack of service.

The landlord also indicated that the tenants had reimbursed the landlord for the \$200.00 strata fine and as such the landlord no longer requires this portion of the application. The hearing proceeded strictly on the landlord's request for an order of possession and a monetary order for recovery of the filing fee.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for recovery of the filing fee?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 1, 2015 on a fixed term tenancy for 1 year and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated September 9, 2015. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid on September 9, 2015.

On January 5, 2017, the landlord served the tenant with the 1 Month Notice dated January 4, 2017 via Canada Post Registered Mail. The 1 Month Notice sets out an effective end of tenancy date of February 28, 2017 and that it was being given as:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided written details that after the tenant had moved in a dog was found to be on the property. The tenant was provided a warning as there was a no pet clause in the tenancy agreement. The landlord provided affirmed testimony that on December 11, 2016 a child was hurt by a dog that the tenant was taking care of for 10 days. The landlord

Analysis

The tenants have not made application pursuant to subsection 47(4) of the Act within ten days of receiving the 1 Month Notice dated January 5, 2017. 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 requires the tenants to vacate the premises by February 28, 2017. As such, I find that the landlord is entitled to order of possession effective on February 28, 2017 as the tenants have conclusively accepted that the tenancy is at an end as no application was filed and served upon the landlord.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenants' application for dispute is dismissed for lack of service.
The landlord is granted an order of possession effective on February 28, 2017.
The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenants. If the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as an order of those Court(s).

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 24, 2017

Residential Tenancy Branch