



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided undisputed affirmed evidence that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 24, 2017. The landlord has also submitted a copy of the Canada Post Customer Receipt tracking label as confirmation of service. The landlord stated that the package was returned by Canada Post as unclaimed. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served as claimed and find that although the tenant did not pick up the package the tenant is deemed sufficiently served as per section 90 of the Act.

At the outset of the hearing the landlord clarified that although he had applied for dispute under the Manufactured Home Park Tenancy Act, the landlord has a tenancy agreement with the tenant for the manufactured home and not for the pad. As such, this file shall be amended to reflect that this application for dispute shall be under the Residential Tenancy Act and not the Manufactured Home Park Tenancy Act.

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 applicant's claim and my findings are set out below.

This tenancy began on December 1, 2013 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 1, 2013. The monthly rent is \$350.00 payable on the 1st day of each month. A security deposit of \$175.00 was paid.

The landlord provided undisputed affirmed testimony that the tenant was served with the 1 Month Notice to End Tenancy issued for Cause (the 1 Month Notice) dated October 26, 2016 in person on October 26, 2016. The landlord has submitted a copy of a proof of service document which confirms this. The landlord's agent, M.H. also confirmed that the tenant was personally served with the 1 Month Notice in which the tenant acknowledged receipt of it by signing for it.

The 1 Month Notice sets out an effective end of tenancy date of November 30, 2016 and that there were 3 reasons given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord stated that the rental unit is approximately 250 sq. ft. and that it was agreed that there would only be 1 occupant. The landlord stated that he believes that the tenant has a second occupant/girlfriend living there now along with 4 dogs. The landlord stated that as of the date of this hearing the tenant has not complied with the 1 Month Notice and still occupies the rental unit.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed evidence of the landlord that the tenant was properly served with the 1 Month Notice dated October 26, 2016 in person on October

26, 2016 as shown by the landlord's proof of service document in which the tenant signed in receipt.

The landlord provided details of his reasons for cause in his direct testimony and I accept the undisputed claims of the landlord that the landlord has provided sufficient evidence to justify his claims.

The tenant has not made application pursuant to subsection 47(4) of the Act within five days of receiving the 1 Months' Notice. In accordance with subsection 47(5) of the Act, the tenant's failure to take either of these actions within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2016. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

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

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the 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 that court.

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