



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 a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated December 28, 2016 (the "1 Month Notice") and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were served on the tenant by posting to the tenant's door on January 30, 2017, which was witnessed by R.A. The landlord submitted a proof of service document in evidence signed by R.A. supporting the landlord's testimony. The landlord testified that the tenant continues to occupy the rental unit. Based on the above, and without any evidence before me to prove to the contrary, I accept that the tenant was served with the Notice of Hearing, Application and documentary evidence personally by the landlord on January 30, 2017.

Issue to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on June 22, 2011. The monthly rent was \$1,075.00 per month at the start of the tenancy and due on the first day of each month. Over the course of the tenancy, the monthly rent increased to \$1,150.00 per month according to the landlord. The landlord affirmed that the tenant only paid a \$250.00 security deposit at the start of the tenancy which has accrued no interest to date, which the landlord continues to hold.

The landlord confirmed service of the 1 Month Notice dated December 28, 2016, by personal service on the tenant on the same date, which was witnessed by the landlord's wife according to the landlord. The 1 Month Notice included an effective vacancy date of January 31, 2017 and indicated one cause on page two of the 1 Month Notice. The landlord affirmed that the tenant accepted the 1 Month Notice and did not dispute the 1 Month Notice.

The landlord submitted the tenancy agreement, 1 Month Notice, proof of service document and breach letters in evidence.

Analysis

Based on the undisputed documentary evidence and undisputed oral testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 47 of the *Act* states that if the tenant once served with the 1 Month Notice does not dispute the 1 Month Notice within 10 days of receiving the 1 Month Notice, the tenant is conclusively presumed to have accepted the 1 Month Notice and must vacate the rental unit on the effective vacancy. In the matter before me, the tenant did not dispute the 1 Month Notice and as a result, I find the tenancy ended on the effective vacancy date which was January 31, 2017. As the tenant continues to occupy the rental unit, I find the tenant is over-holding the rental unit. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenant.

As the landlord's application was successful and pursuant to section 72 of the *Act*, I authorize the landlord to retain **\$100.00** from the tenant's \$250.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. I find the tenant's security deposit is now \$150.00 as a result which the landlord continues to hold.

Conclusion

The landlord's application is successful.

The landlord is granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I find the tenancy ended on January 31, 2017 and that the tenant has been over-holding the rental unit since that date.

The landlord has been authorized to retain \$100.00 from the tenant's \$250.00 security deposit in full satisfaction of the landlord's recovery of the cost of the filing fee. The tenant's security deposit is now \$150.00 as a result which the landlord continues to hold.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2017

Residential Tenancy Branch