



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

Introduction

This hearing convened pursuant to the landlord's application for an order of possession and recovery of the filing fee for the cost of his application. The landlord and the tenants called in to the teleconference hearing.

Preliminary Issue – Order of Possession

The tenants stated that they did not dispute the two-month notice to end tenancy for landlord's use. However, they submitted that the effective date on the notice should be corrected to March 31, 2017. The tenants stated that they received the notice to end tenancy by registered mail on January 4, 2016. The landlord stated that he mailed the notice on December 27, 2016, and therefore the tenants were deemed served with the notice on December 30, 2016 and the effective date of February 28, 2016 should not correct to March 31, 2016.

I informed the parties that when a document is sent by registered mail it is deemed to have been received five days after mailing. In this case, the tenants would have been deemed to have been served with the notice on January 1, 2017, and as that date was a statutory holiday, the deemed date of service would have moved to the next business day, January 2, 2017. I found that whether the tenants were deemed served on January 2, 2017 or if the deeming provision did not apply and they in fact received the notice on January 4, 2017, the effective date of the notice to end tenancy would be automatically corrected to March 31, 2017.

As the tenants did not oppose the order of possession, I grant the landlord an order of possession effective March 31, 2017.

The only other outstanding issue was whether the landlord was entitled to recovery of the filing fee for the cost of his application.

Issue(s) to be Decided

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenants stated that they should not have to pay the filing fee because they did not dispute the notice to end tenancy. The tenants stated that in November 2016 the landlord asked the tenants to stop texting him, so they did not communicate with him after that time. The tenants acknowledged that they asked the landlord not to text them either, but that was only in regard to a previous dispute, not this one.

The landlord stated that he tried to call the tenants but they said they could not understand him, and then they said "don't text me anymore," so he stopped. The landlord submitted that he should therefore be entitled to recovery of his filing fee.

I note that the parties participated in a teleconference hearing on January 4, 2017, pursuant to the landlord's application for an order of possession for a purported end of fixed term. The arbitrator found that there was no fixed term and dismissed the landlord's application.

Analysis

I find that both the landlord and the tenants were not being cooperative about communicating with each other. If the tenants had informed the landlord that they were not disputing the notice, the landlord may not have had to apply for the order of possession. It was open to the landlord to communicate with the tenants by mail or in the hearing on January 4, 2017, but he did not.

I find that in failing to properly communicate with each other, the landlord and the tenants are equally responsible for the landlord's application for this matter, and I therefore order that the tenants pay the landlord half of the cost of the filing fee, in the amount of \$50.00.

Conclusion

I grant the landlord an order of possession effective March 31, 2017. The tenants must be served with the order of possession. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the landlord an order under section 67 for the amount due of \$50.00. This order may be filed in the Small Claims 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 27, 2017

Residential Tenancy Branch

