



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 (the "Application") under the Residential Tenancy Act (the "Act") for an order of possession for cause.

The landlord's husband, "B.G.", (the "landlord") appeared at the teleconference hearing as agent for the landlord. The tenants did not appear although the hearing lasted 24 minutes. The landlord gave affirmed testimony. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that the male tenant R.S. and the female tenant K.G. were each served with a copy of the landlord's Application and Notice of Hearing by registered mail. The landlord testified that the registered mail for each tenant was sent to the tenants' address on December 14, 2016. The landlord provided the Canada Post Customer Tracking Receipt with the Tracing Number to confirm the mailing. Taking into account the undisputed testimony of the landlord and in accordance with section 89 of and 90 the *Act*, I find that the tenants are each deemed served with a copy of the landlord's Application and the Notice of Hearing on December 19, 2016.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to recover the filing fee paid for this application from the tenant?

Background and Evidence

The undisputed testimony of the landlord established that a month to month tenancy started when the tenants moved into the rental unit at the end of June 2016, pursuant to an oral tenancy agreement. Rent in the amount of \$700.00 is due on the first day of each month pursuant to the oral agreement. However, the landlord testified that the tenants started to pay rent in the amount of \$850.00 as of October 1, 2016 without any explanation.

The landlord testified that the tenants were served with a copy of a One Month Notice for Cause (the "One Month Notice") by leaving a copy with tenant R.S. on December 1, 2016. The One Month Notice is dated November 30, 2016 and required the tenants to move out by December 31, 2016. After expiration of that 10 day period, the landlord applied for an order of possession.

While the landlord checked off several reasons on the One Month Notice for wanting to end the tenancy, his evidence centered on one complaint. The landlord testified that the tenant has allowed an unreasonable number of occupants in the unit. The landlord testified that the tenants have five residents in their unit when only four are permitted.

The landlord is seeking an order of possession and to recover the \$100.00 filing fee paid for this application from the tenant.

Analysis

Based upon the undisputed evidence of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the dispute resolution hearing package and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the One Month Notice on December 1, 2016. I also find that the One Month Notice complies with section 52 of the *Act* and that it is valid.

Section 46(2) of the *Act* stipulates that a One Month Notice is effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation.

Based on the foregoing, as the tenants are deemed to have received this Notice on December 1, 2016, I find that the earliest effective date of this One Month Notice is January 31, 2017.

Section 47 of the *Act* stipulates that a tenant has ten days from the date of receiving the Notice ending tenancy to file an Application for Dispute Resolution to dispute the Notice. In the

circumstances before me I have no evidence that the tenants filed an application to dispute the Notice.

Based on the foregoing, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrective effective date of the One Month Notice, January 31, 2017. Accordingly, the landlord is entitled to an order of possession.

As the landlord's application was successful, I also find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenants.

Conclusion

The landlord is granted a monetary order in the amount of \$100.00 for the filing fee which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **2 days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 07, 2017

Residential Tenancy Branch