



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Owners Strata Plan BC52354 - "Collage"
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPE; OPB; MND; MNR; FF

Introduction

This is the Landlords' Application for Dispute Resolution seeking an Order of Possession; a monetary award for unpaid rent and damages to the rental unit; and to recover the cost of the filing fee from the Tenant.

The Landlords' agent AS signed into the teleconference and gave affirmed testimony at the Hearing. The Tenant did not sign into the Hearing, which remained open for 20 minutes.

AS testified that the Notice of Hearing documents and copies of the Landlords' documentary evidence were sent to the Tenant, via registered mail, to the rental unit on February 6, 2017. A copy of the registered mail receipt and tracking number was provided in evidence.

I find that the Tenant has been duly served with the Notice of Hearing documents, pursuant to the provisions of Section 89(1)(c) of the Act. Service in this manner is deemed effective 5 days after mailing the documents.

The Hearing continued in the Tenant's absence.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession and Monetary Order pursuant to the provisions of Section 55 and 67 of the Act?

Background and Evidence

AS testified as follows:

- The Tenant was an employee with the Landlords, working as a resident caretaker. The tenancy agreement provides that rent is \$2,000.00 per month, due on the first day of each month; however, the corporate Landlord paid \$1,000.00 per month towards the Tenant's rent, on the Tenant's behalf. The Tenant's employment contract was terminated on December 28, 2016, effective February 1, 2017.
- The Tenant was personally served with the One Month Notice to End Tenancy for End of Employment, on December 28, 2016.
- The Tenant is avoiding the Landlords. The Landlords sent text messages to the Tenant on January 12, 2017 and at the beginning of February, 2017. The Tenant has responded by text and has promised to meet with the Landlords, but has not kept his promises.
- The rental unit was left unlocked by the Tenant, with the Tenant's possessions inside. The rental unit is very dirty, including stains on the carpets and garbage strewn about. The Tenant left out food throughout the rental unit. The Landlords are concerned about pests. The toilet is damaged. The Landlords believe that the carpet will have to be replaced; the plumbing will require maintenance; a pest control company will have to be hired; and the entire unit will require painting. The Landlords will also have to do extensive cleaning and garbage removal to make the rental unit habitable for a future employee/occupant.
- AS is certain that the Tenant owes rent, but is not certain of the amount owed.
- The tenancy agreement requires the Tenant to pay a security deposit, but the Tenant did not provide one.

Analysis

Section 48 of the Act provides:

Landlord's notice: end of employment with the landlord

- 48** (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if
- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
 - (b) the tenant's employment as a caretaker, manager or superintendent is ended, and

(c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

(2) An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

(3) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the tenant receives the notice,

(b) not earlier than the last day the tenant is employed by the landlord, and

(c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

(4) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[reproduced as written]

Based on the undisputed affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was served with the Notice to End Tenancy on December 28, 2016. There is no evidence that the Tenant disputed the Notice within 10 days of receipt of the Notice. I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2017.

I am satisfied that the Tenant did not provide the Landlords with vacant possession of the rental unit on January 31, 2017, and that the Landlords are entitled to an Order of Possession.

With respect to the Landlords' monetary claims, I find that there is insufficient evidence of the amount of unpaid rent, if any, or the cost of remediating the damages to the rental unit. This portion of the Landlords' claim is dismissed with leave to reapply.

The Landlords have been partially successful in their Application and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Tenant.

Conclusion

I find that the tenancy ended on January 31, 2017.

I hereby provide the Landlords with an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also provide the Landlords with a Monetary Order in the amount of **\$100.00** representing recovery of the cost of the filing fee. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Landlords' request for a monetary award for unpaid rent and damages to the rental unit is **dismissed with leave to reapply**.

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: March 03, 2017

Residential Tenancy Branch