



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") requesting an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. However, there was no appearance for the Tenant during the six minute hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified she served the Tenant with a copy of the Application and the Hearing Package to the rental unit by registered mail on February 3, 2017. The Landlord provided the Canada Post tracking number into evidence to verify this method of service. The Landlord testified that the Canada Post website shows the Tenant signed for and received these documents on February 13, 2017. Therefore, based on the undisputed evidence before me I find the Landlord completed service pursuant to Section 89(1) (c) of the Act.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy for a subsidised rental unit started in December 2009 on a monthly basis. The Tenant's rent contribution, which is geared to income, is \$294.00 payable on the first day of each month. No security deposit was paid for this tenancy.

The Landlord testified that the Tenant had stored an unreasonable amount of garbage on the rental unit which he had failed to clean up despite being requested in writing to do so and with the aid of the Landlord's contractor.

As a result, the Landlord served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") on December 17, 2016. The 1 Month Notice provided into evidence shows a vacancy date of January 31, 2017 and was served to the Tenant by mail.

The Landlord testified that the Tenant approached the Landlord the following week after the 1 Month Notice was served to speak to the Landlord about it; however, the Tenant has failed to remedy the garbage issue on the rental property and has not moved out pursuant to the vacancy date on the 1 Month Notice.

The Landlord testified that the Tenant was not in rental arrears and when he paid rent for January and February 2017, he had been issued with rent receipts stating that the payment had been accepted for use and occupancy only. However, the Landlord testified that they had not cashed the Tenant's rent cheque for March 2017 as they are looking to end the tenancy as soon as possible.

Analysis

I have examined the 1 Month Notice and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I accept the Landlord's evidence that the 1 Month Notice was served pursuant to Section 88(c) of the Act and I find the vacancy date on the 1 Month Notice complies with Section 47(2) of the Act as it allows for one clear rental month before it became effective.

Section 47(4) of the Act allows a tenant to dispute a 1 Month Notice by making an Application within ten days of receiving it. There is no evidence before me to indicate the Tenant applied to dispute the 1 Month Notice.

Section 47(5) of the Act states that if a tenant fails to make an Application within ten days of receiving it, the tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 1 Month Notice and must vacate the rental unit by that date.

Therefore, as the Tenant failed to make an Application pursuant to the Act, I find the tenancy ended on the vacancy date of January 31, 2017. However, the Tenant still

occupies the rental unit. Therefore, the Landlord's request for an Order of Possession is granted.

As the Tenant has been issued with rent receipts for use and occupancy only, and the Landlord has not accepted or cashed the Tenant's rent cheque for March 2017 rent, I find the Landlord is entitled to an Order of Possession effective two days after it is served on the Tenant.

This order may be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. The Tenant may be held liable for costs associated with the enforcement of the order.

Since the Landlord has been successful in this Application, I also grant the \$100.00 filing fee for the cost of having to make this Application pursuant to Section 72(1) of the Act. The Landlord is issued with a Monetary Order for this amount. This order must be served to the Tenant and may then be enforced through the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant did not dispute the 1 Month Notice and still occupies the rental unit. The Landlord is granted a two day Order of Possession. The Landlord is issued with a Monetary Order to recover the filing fee from the Tenant.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 03, 2017

Residential Tenancy Branch