



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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:48 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent, JC ('landlord'), testified on behalf of the landlord in this hearing and was given full authority by the landlord to do so. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord provided undisputed testimony during the hearing that he served the tenants the application for dispute resolution on January 16, 2017, by way of registered mail, as well as copies of his evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenants deemed served with copies of the landlord's application and evidence.

The landlord provided undisputed testimony that the tenants were served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice'), with an effective date of January 31, 2017, on December 14, 2016, by registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 1 Month Notice on December 29, 2016, five days after mailing.

Issues(s) to be Decided

Is the landlord entitled an Order of Possession?

Is the landlord entitled to recovery of his filing fee?

Background and Evidence

The landlord provided undisputed testimony that this month to month tenancy began in 2006. Rent is currently \$2,100.00 per month, due on the first of each month.

The landlord served the tenants a 1 Month Notice on December 14, 2016 with an effective date of January 31, 2017. The landlord indicated during the hearing that the reason the 1 Month Notice was served to the tenants was for subletting the rental suite without the landlord's permission. The landlord testified that subletting without notice to the landlords is in direct violation of the strata bylaws. The landlord did not submit a copy of the 1 Month Notice.

The landlord provided, in his written evidence, a copy of the strata bylaws that indicate that "no residential strata lot or portion of the strata lot may be rented for less than three months". A copy of a warning letter sent to the landlord by the property manager was provided in evidence, informing him that a charge of \$300.00 has been levied against the unit for three separate moves and that the resident is engaged in short term rentals.

The landlord submitted, in his evidence, online listings for airbnb short-term rentals for his suite to support that his rental unit has been sublet by his tenants as short-term rentals without his permission.

Analysis

Although I accept the landlord's undisputed testimony that the tenants were served with the landlord's 1 Month Notice, section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As the landlord did not provide a copy of the 1 Month Notice for this hearing, I was unable to verify that the Notice complies with the requirements of section 52 of the *Act*. Under these circumstances, I am not allowing the landlord's application for an Order of Possession for cause, and this tenancy is to continue until ended as per the *Act*.

As the filing fee is a discretionary award given to a successful party after a full hearing on its merits, I dismiss the landlord's application to recover the \$100.00 filing fee.

Conclusion

I dismiss the landlord's application for an Order of Possession for cause.

The 1 Month Notice is cancelled. The 1 Month Notice of December 14, 2016 is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The landlord's application to recover the filing fee is dismissed.

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 1, 2017

Residential Tenancy Branch