



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 appeared at the teleconference hearing. The tenant did not appear although the hearing lasted 16 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.

This matter was adjourned to today's date from March 2, 2017. The Interim Decision dated March 3, 2017 should be read in conjunction with this decision.

The Residential Tenancy Branch records show that a copy of the Interim Decision dated March 3, 2017 and the Notice of Reconvened Hearing was mailed to the tenant at the address provided by the tenant. As a result, I am satisfied that the tenant was aware of the time and date for this hearing.

Issues 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 the tenant entered into a month to month tenancy approximately 5 years ago. Although the landlord indicated that there is a written tenancy agreement, the landlord did not have a copy to refer to at the hearing. The landlord was unable to recall the exact date the tenancy started. Rent in the amount of \$600.00 is due on the first day of each month. The landlord received a security deposit in the amount of \$292.50 on or before the start of the tenancy. The

landlord testified that the tenant did not pay rent that was due for the month of March 2017.

The landlord testified that the tenant was served with a copy of a One Month Notice for Cause (the "One Month Notice") by leaving a copy with the tenant on December 28, 2016. The One Month Notice required the tenant to move out by January 31, 2017.

The reason given by the landlord for ending the tenancy set out on the One Month Notice is that the tenant knowingly gave false information to a prospective tenant or purchaser of the rental/site or property/park. The landlord testified that he spoke with a prospective tenant who changed her mind about renting a unit from him after speaking with the tenant. The landlord indicated that the tenant had informed the prospective renter that the tenant was going to have the building condemned through the public health authority and that the landlord moved out of the building so that the landlord could set it on fire. The landlord was of the view that the tenant's false statements scared off the prospective tenant.

Both the landlord and tenant submitted a copy of the One Month Notice. The tenant's copy of the One Month Notice had all the particulars except the date the landlord signed the notice. The landlord's copy, however, showed a date of December 28, 2016. The landlord was asked about the discrepancy and the landlord indicated that he had no idea as to why the tenant's copy didn't show the date. The landlord insisted that the copy that he served on the tenant was the same as the copy the landlord had submitted as evidence at the hearing.

The landlord acknowledged that the last name of the tenant was misspelled on the One Month Notice.

The landlord testified that the tenant did not move out of the rental unit by the effective date. The landlord also testified that the tenant did not make an application to dispute the One Month Notice within the 10 days required under the *Act*.

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 tenant was made aware of the time and date of the reconvened hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. 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 tenant was duly served with the One Month Notice on December 28, 2016.

Given the lack of testimony from the tenant, I accept the landlord's evidence that the copy of the One Month Notice served on the tenant was dated.

Section 68 of the *Act* allows an Arbitrator to amend the content of a notice to end a tenancy if satisfied that:

- (a) the tenant receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Although the tenant's last name was misspelled on the One Month Notice, I find that the tenant receiving the notice knew, or should have known, that the One Month Notice pertained to him. In making this finding I have taken into account the fact that the tenant's rental unit is correctly described on the One Month Notice. I have also taken into account the fact that the landlord made the same spelling error in the tenant's last name on their Application. Notwithstanding the spelling error, the tenant knew that the landlord's Application pertained to him as the tenant appeared at the hearing on the last occasion and corrected the misspelling of his last name. The landlord's Application and the style of cause were amended at the previous hearing based upon the tenant's correction. Therefore, I find that the tenant knew, or should have known that the One Month Notice pertained to him despite the spelling error. For these reasons, I find that it is reasonable to amend the One Month Notice to reflect the correct spelling of the tenant's last name.

Based on the foregoing, I find that the One Month Notice complies with section 52 of the *Act* and that it is valid. I find that the effective date of the 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 there is insufficient evidence that the tenant filed an application to dispute the One Month Notice. Therefore, I find that the tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One Month Notice, January 31, 2017. As a result, I find that the landlord is entitled to an order of possession.

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

As the landlord is holding a security deposit from the tenant in the amount of \$292.50, I allow the landlord to deduct the \$100.00 owed by the tenant for the filing fee from the security deposit.

Conclusion

The landlord's application is successful and the tenancy will end.

The landlord is granted a monetary order in the amount of \$100.00 for the filing fee from the tenant which must be served on the tenant as soon as possible. Should the tenant 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. In the alternative, the landlord may deduct the \$100.00 filing fee from the security deposit held.

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. Should the tenant 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: March 29, 2017

Residential Tenancy Branch