



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes: OPL, CNL, MNDC, FF

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications. The landlord applied for an order of possession based on a 2 Month Notice to End Tenancy for Landlord’s Use dated March 14 (the “2 Day Notice”), for a monetary order for damage or loss, and for recovery of the application filing fee. The tenant applied to cancel the 2 Month Notice and for recovery of the application filing fee.

The tenant did not attend the hearing. The named landlord attended with his spouse and was given a full opportunity to be heard, to present documentary evidence and to make submissions.

As the tenant did not attend the hearing, service of the landlord’s application and the notice of hearing were considered. The landlord provided affirmed testimony that the tenant was served by registered mail sent June 23, 2017, and a Canada Post tracking number was provided in support. I accept that the tenant has been served in accordance with the Act. The tenant would also have been aware that his application was scheduled to be heard at the same time.

Issues to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

If not, is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award?

Is either party entitled to recover the application filing fee from the other?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on June 15, 2014. It was most recently a month to month tenancy with rent of \$1,000.00 payable on the first day of each month. A security deposit of \$500.00 was paid at the beginning of the tenancy and remains with the landlord.

The landlord testified that the 2 Month Notice was left in the tenant's mailbox on March 14, 2017, and that the tenant and the landlord subsequently reached an agreement to extend the tenancy one month past the effective date on the 2 Month Notice because the tenant's son was graduating.

The tenant's application to dispute the 2 Month Notice states that he received the notice on June 1, 2017. However, the landlord testified that although the tenant received a second copy of the 2 Month Notice on that date, the tenant was served in March. A letter dated June 1 from the landlord to the tenant attaching the copy was in evidence.

The landlord further testified that the tenant did not vacate the rental property on June 30, 2017 as agreed, and that he stayed for July and part of August. The tenant appears to have vacated the rental property only a few days ago, and the landlord is not certain he has actually left, but will be inspecting.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the landlord's undisputed testimony and the documentary evidence I accept that the tenant was served with the 2 Month Notice on March 17, three days after it was left in his mailbox, in accordance with s. 90 of the Act.

Section 49(8) of the Act provides that if a tenant does not apply to dispute a 2 Month Notice within 15 days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date. Here, I find the effective date is the date the landlord and tenant orally agreed upon: June 30, 2017.

In accordance with section 49(9) of the Act, the failure of the tenant dispute the 2 Month Notice within 15 days led to the end of the tenancy on June 30, 2017, the corrected effective date of the notice. The tenant, and anyone else on the premises, was required to vacate the premises by that date.

The tenant's application to cancel the 2 Day Notice would have failed even if he had filed within 15 days of receipt of the notice, as he did not attend at the hearing of his own application.

I accept the landlord's evidence that the tenant did not vacate until approximately mid-August, and that the landlord receive no monies for July or August. Accordingly, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The landlord provided undisputed evidence that the tenant owes \$2,000.00 for July and August, and I award the landlord this amount.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent for use and occupancy	\$2,000.00
Filing fee	\$100.00
Less security deposit	-\$500.00
Total Monetary Order	\$1,600.00

I issue a monetary order in the landlord's favour in the amount of **\$1,600.00** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77, a decision or an order is final and binding, except as otherwise provided.

Dated: August 15, 2017

Residential Tenancy Branch