



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPB FF

Introduction:

Only the landlord and agent attended and gave sworn testimony. The agent said they served the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to section 89 of the Act. The landlord applies pursuant to the Residential Tenancy Act for orders as follows:

- a) An Order of Possession pursuant to Sections 44, and 55 as the tenant has breached a term of the fixed term tenancy agreement by not vacating as agreed; and
- b) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant had a fixed term lease and did not vacate as agreed? Is the landlord entitled to an Order of Possession and to recover the filing fee?

Background and Evidence:

Only the landlord and her agent attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the current tenancy commenced August 1, 2016 on a fixed term lease expiring July 31, 2017, a security deposit of \$725 was paid and rent was \$1590 a month. According to the lease terms vacant possession was required at the end but the tenant refused to move. The tenant eventually vacated and the parties did a condition inspection report which the landlord said the tenant refused to sign. As the tenant has vacated, the landlord no longer requires an Order of Possession.

On September 5, 2017, the landlord submitted 114 pages of evidence. In it was an index of evidence and a monetary worksheet for over \$7000. I told the agent that on their application, they claimed no monetary order and there was no Amendment to the Application so I was unable to consider their damage claim. This is based on the Principles of Administrative Justice that a person must be informed of the case against them and have the opportunity to respond.

The agent was anxious to have the matter heard due to the additional time to make another application. He said first they did an Amendment but could not serve it for they had no forwarding address for the tenant. When I told him service was necessary on the same Principle, he then said they served it. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord no longer requires an Order of Possession as the tenant vacated.

Monetary Order

As discussed with the landlord and agent in the hearing, I find insufficient evidence that the tenant was informed of the monetary claim against them. There was no copy of an amendment in the file or in the 114 pages of evidence dated September 15, 2017; nor was it mentioned in that evidence. I find it improbable that an amendment was filed and served on the tenant. I find there was no monetary claim on the Application so I dismiss this oral claim and give them leave to reapply.

Conclusion:

An Order of Possession is no longer required. I find the landlord is entitled to recover filing fees paid for this application as the tenant was refusing to move at the end of their fixed term lease when the application was filed. A monetary order for \$100 for the filing fee is issued. I dismiss the oral claims of the landlord for a monetary order and give them 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: September 21, 2017

Residential Tenancy Branch