



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This decision pertains to the Landlord's application for dispute resolution made on May 25, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlord seeks an order of possession of the rental unit, and a monetary order for recovery of the filing fee.

The Landlord and the Tenant's agent (the "Agent") attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues of service.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Preliminary Issue – Is the Roommate a Tenant?

The Agent testified that she is the Tenant's agent for the purposes of this application, as the Tenant is currently incarcerated. The agent is the Tenant's roommate.

She submitted that she is more than just an occupant, but is a co-tenant as per a written tenancy agreement. The Landlord submitted a copy of a written tenancy agreement on June 14, 2018, in which only the Tenant's name is listed as a tenant. The Agent submitted into evidence on July 6, 2018—three days before the hearing—various documentation. The Landlord acknowledged receiving the documentation but disputed the contents of it, specifically a copy of a written tenancy agreement in which the Agent's name appears below the Tenant's name and ID information. Her name does not appear in the copy of the agreement that the Landlord submitted into evidence. In my view, her name appears in the copy of the agreement (that she submitted) for the purpose of being a reference for the Tenant; the Tenant does not have a driver's

license, the Agent testified. The Agent's name and signature are absent from the signature page of both versions of the agreement. While there is a discrepancy between the agreements submitted, I do not find that the Agent is a tenant.

Issues to be Decided

1. Is the Landlord entitled to an order of possession of the rental unit?
2. Is the Landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The tenancy began on December 5, 2017, with monthly rent being \$1,550, and a security deposit of \$775.00. On April 23, 2018, the Landlord issued a One Month Notice to End Tenancy for Cause (the "Notice"). The Landlord served the Tenant with the Notice in-person on April 23, 2018, and service was witnessed by the Landlord's wife, L.J. The Landlord submitted into evidence copies of the Notice and Proof of Service.

The Agent testified and acknowledged being present when the Tenant received the Notice, and was aware of the Notice being served. I asked the Agent if she or the Tenant applied for dispute resolution within 10 days of receiving the Notice. She said that they did not think they needed to, as the Landlord had applied for dispute resolution. (The Notice was served on April 23, 2018. The Landlord did not apply for dispute resolution until May 23, 2018.) I asked the Agent if she or the Tenant had read page 2 of the Notice where it states that the Tenant must apply within 10 days of receiving the Notice if they disputed the Notice. The Agent testified that they did not read it, or, that they were unaware of this.

Analysis

Section 55 (2) (b) of the Act states that a landlord may seek an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Section 55 (3) of the Act that that an arbitrator may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

In this case, the Landlord seeks an order of possession. The Landlord served the Tenant with the Notice on April 23, 2018, the Tenant failed to apply for dispute

resolution within ten days of receiving the notice, and the time for making such an application has long since expired. Section 47 of the Act stipulates that should a tenant fail to submit an Application within 10 days of receipt of the Notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit.

s such, pursuant to sections 47 of the Act, I find the tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I hereby grant an order of possession to the Landlord in accordance with Section 55 of the Act. This order is effective two days after service upon the Tenant or the Representative.

As the Landlord is successful in his application I grant a monetary award for recovery of the filing fee. The Landlord may retain \$100.00 of the Tenant's security deposit in full satisfaction of this claim.

Conclusion

The Landlord is granted an order of possession. This order must be served on the Tenant or the Representative and is effective two days after service to the Tenant or the Representative. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: July 9, 2018

Residential Tenancy Branch