



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC FF O
For the tenant: MT CNC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for cause, for “other” and provided a copy of a fixed term tenancy agreement stating “order of possession” in the details of dispute section of the Application for Dispute Resolution Hearing, and to recover the cost of the filing fee.

The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated August 22, 2016 (the “1 Month Notice”) and for more time to make an application to cancel a notice to end tenancy.

The tenant and an agent for the landlord (the “agent”) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The agent confirmed receipt of the tenant’s documentary evidence and that the landlord had the opportunity to review that evidence prior to the hearing. The tenant denied that he was served with the landlord’s evidence even though according to the registered mail tracking website, the tenant signed for and accepted the registered mail package from the landlord on September 22, 2016. The registered mail package was mailed on September 16, 2016 and according to the agent contained the landlord’s Application for Dispute Resolution (the “Application”), Notice of Hearing document and documentary

evidence. The registered mail tracking number has been included on the cover page of this decision for ease of reference. Based on the evidence before me, I find the tenant was served with the landlord's Application, Notice of Hearing document and documentary evidence on September 22, 2016, which is the date the tenant signed for the registered mail package.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

I find the tenant's application for more time to make an application to cancel a notice to end tenancy to be moot, as the tenant did file his application on time after being served with the 1 Month Notice.

In addition, pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to properly reflect the company name of the landlord versus the personal name of the agent for the landlord.

During the hearing, the tenant alleged that he suffers from a brain injury and is dyslexic. The tenant did not submit any supporting documentation of either in evidence.

Issues to be Decided

- Should the 1 Month Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

At the outset of the hearing, the signed lease agreement between the parties (the "tenancy agreement") was reviewed. Both parties signed the fixed term tenancy agreement which indicates under section 1.1 the following:

"...It is understood that the tenancy ends with the expiry of this lease agreement and the Tenant shall vacate the Premises by 1 p.m. on the **31st** day of **October, 2016.**"

[reproduced as written]

While the tenant claims he was not aware of what he was signing when he signed the tenancy agreement, both parties initialed each page of the tenancy agreement. In addition, the parties agreed that rent for October 2016 was confirmed as paid by the tenant, which means the earliest date an order of possession could be granted for is the date the tenancy would be ended based on the fixed term tenancy agreement before me, October 31, 2016.

Analysis

Based on the documentary evidence and testimony of the parties, and on the balance of probabilities, I find the following.

Given the above, I find it is not necessary to proceed with consideration of the merits of the 1 Month Notice as the tenancy is ending regardless on October 31, 2016. I find the tenancy agreement clearly indicates that the tenant **must vacate** the rental unit at 1:00 p.m. on October 31, 2016. Given the above, **I dismiss** the tenant's application and **I grant** the landlord an order of possession effective **October 31, 2016 at 1:00 p.m.** pursuant to section 55(2)(c) of the *Act* which states:

“the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term.”

[reproduced as written]

I note that it is the responsibility of the tenant to seek assistance from an agent or other personal representative prior to signing a legally binding contract between the parties.

As the landlord's application has merit, I grant the landlord the recovery of the cost of their filing fee in the amount of **\$100.00**. **I authorize** the landlord to retain \$100.00 from the tenant's security deposit of \$400.00 in full satisfaction of the recovery of their filing fee. As a result, I find the tenant's \$400.00 security deposit is now reduced to \$300.00, due to the \$100.00 filing fee granted to the landlord.

Conclusion

The tenant's application has been dismissed.

The landlord has been granted an order of possession effective October 31, 2016 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord is authorized to retain \$100.00 from the tenant's security deposit in full satisfaction of the recovery of the landlord's filing fee. As a result, I find the tenant's \$400.00 security deposit is now reduced to \$300.00, due to the \$100.00 filing fee granted to the landlord.

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: October 19, 2016

Residential Tenancy Branch