



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPC FF

Introduction

This application was brought by the Strata Corporation and the landlord as permitted under section 138 of the *Strata Property Act*. The applicants seek an Order of Possession pursuant to a Notice to End Tenancy for cause served by registered mail on July 25, 2008.

Despite being served with the Notice of Hearing, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

This tenancy began October 1, 2007.

As a matter of note, the hearing was joined by a party who stated she was a sub tenant. That party was actually part of another hearing set to take place at 2 p.m. rather than the present 10 a.m. hearing. The error went undetected due to the confusion over unrecorded sub tenants in the present hearing. In any event, her claims and comments have no bearing in this decision.

Issue(s) to be Decided

This matter requires a decision on whether the strata corporation has lawfully acted as landlord in serving the Notice to End Tenancy and whether the strata corporation and the landlord/unit owner are entitled to the Order of Possession.

Background and Evidence

During the hearing, the strata corporation's property manager gave evidence by way of a letter dated July 3, 2008 to the landlord from the management company acting on behalf of the strata council. That letter advised that the tenant appears to have rental agreements on 15 rental units in the complex which he then sublets on short term rentals without the knowledge of the landlord.

He was advised that this was in breach of a local bylaw and section 34 of the *Residential Tenancy Act*. The landlord was instructed to evict the tenant on threat of the strata corporation initiating action under the *Strata Property Act* with potential costs to the landlord.

The property manager gave further evidence that the tenant is under police investigation for fraud with respect to a number of the tenancies in question and in all cases of which he is aware, the landlord/unit owner was not aware that the tenant was sub-letting the rental unit. Section 34 of the *Residential Tenancy Act* prohibits a tenant from subletting without the landlord's written consent.

The rental unit is currently not occupied.

Analysis

I find that the strata corporation acted lawfully in serving the Notice to End Tenancy.

Section 47 of the *Act* provides, and it is reiterated on the notice to end, that a tenant receiving such notice may make application to dispute it within 10 days of receiving it.

If there is no application to dispute, the tenant is presumed to have accepted the notice and must vacate by the end date set by the notice, in this instance August 31, 2008.

In this instance the tenant has not made application to dispute the notice. Therefore, I find that the applicants are entitled to an Order of Possession.

Conclusion

As the rental unit is currently vacant, I find that the landlord is entitled to the Order of Possession, enforceable through the Supreme Court of British Columbia, effective immediately on receipt of this Order.

I further order that the strata corporation may recover the filing fee for this proceeding by way of the landlord retaining \$50 from the security deposit and passing it to the strata corporation.

Dated: October 2, 2008