



Dispute Resolution Services

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

DECISION

Dispute Codes: ET & FF

Introduction:

This hearing dealt with the landlord's application to end this tenancy early pursuant to section 56 of the *Act*. Although the tenant was served with notice of this hearing and application in person on November 28, 2008, she did not attend the hearing. I proceeded to hear this application in the absence of the tenant.

Issues to be Determined:

Has the landlord met the burden of proof required to end this tenancy early pursuant to section 56 of the *Act*? Alternatively, is the landlord entitled to an Order of Possession based on the one month's Notice to End Tenancy served upon the tenant on October 15, 2008?

Background and Evidence:

The landlord seeks to end this tenancy early on the basis that the tenant is in breach of the tenancy agreement by smoking in the rental unit. The landlord also submits that the tenant's smoking is endangering the health and safety of his daughter.

The landlord submitted that the tenancy agreement included a material term that the tenant was not to smoke in the rental unit. He indicated that the tenant has rejected his requests and written warning to stop smoking. The landlord also stated that the situation is getting much worse where the tenant has threatened the landlord's safety, requiring police presence.

The landlord served the tenant with a one month Notice to End Tenancy due to breach of contract on October 15, 2008. The tenant has not vacated the rental unit by the effective date of November 30, 2008. Given the escalation of the dispute and the threat to his daughter's health the landlord made this application to end the tenancy early.

The landlord did not provide any evidence in support of the allegation that his daughter is suffering serious health problems related to the tenant's smoking.

Analysis:

In order to end a tenancy early pursuant to section 56 of the *Act* a landlord must establish that there is cause and must show that it would be both unfair and unreasonable for the landlord to wait for a one month Notice to End Tenancy pursuant to section 47 to take effect.

In the circumstances before me the tenant was served with a one month Notice to End Tenancy for cause under section 47. I accept that the tenant was served in person on October 15, 2008 with this notice. The tenant had 10 days to dispute the notice or found to have conclusively accepted the end of the tenancy pursuant to section 47(5) of the *Act*.

I find that the tenant has not disputed the one month Notice to End Tenancy and has accepted the end of this tenancy effective November 30, 2008. On this basis I find it is not necessary to consider the merits of the landlord's request to end this tenancy early as the landlord is entitled to an Order of Possession based on the notice served upon the tenant.

I grant the landlord's request for an Order of Possession effective **two (2) days** after it is served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion:

The landlord's application is allow in part. I have found that the landlord is entitled to an Order of Possession on the basis of the one month Notice to End Tenancy served for cause. I have not considered the merits of the landlord's request for an early end to this tenancy. As I have only accepted the landlord's application in part, I deny the landlord's request to recover the filing fee paid for this application.

Dated December 04, 2008.

Dispute Resolution Officer