



Dispute Resolution Services

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

DECISION AND REASONS

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*. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party?

Issue to be Determined:

Is the landlord entitled to an Order of Possession?

Background and Evidence:

This tenancy began on October 1, 2008 for the monthly rent of \$570.00 and a security deposit of \$275.00. The tenancy began to have problems from the start when the tenant brought in another occupant without the landlord's authorization. The landlords also experienced problems with the tenant causing noise that was disturbing other occupants.

The tenant received two written notices regarding the occupant she brought into the rental unit without permission. One was dated November 18, 2008 and the other November 23, 2008. Both warning letters indicated the breach of the tenancy agreement and the disturbance of the quiet enjoyment of other occupants. On November 30, 2008 the landlords served the tenant with a one month Notice to End Tenancy for cause due to breach of a material term of the tenancy agreement, significantly disturbing other occupants or the landlord and having an unreasonable number of occupants in the rental unit.

On December 23, 2008 the landlords alleged that the tenants purposely blocked the toilet which caused a flood. The landlords submit that the tenants took no action to clean the flooding and it was left to them to clean and find a plumber. During the month of December 2008 the landlords were understood that the tenant intended to vacate the rental unit by the effective date of the Notice to End Tenancy, or December 31, 2008.

On January 1, 2009 the landlords noticed that the door to the rental unit had been left open. When they investigated there was no one in the rental unit; however, the tenant's possessions were still in the rental unit. On January 2, 2009 the landlord filed this application seeking an Order of Possession.

The tenant denies receiving any documents related to this dispute, including the one month Notice to End Tenancy. The tenant agreed the toilet had flooded, but denied that it was purposely done. The tenant submitted that she believes she gave the key to the rental unit to the landlords and has been unable to vacate the rental unit. The tenant confirmed that she wants to vacate the rental unit.

Analysis:

I do not accept the evidence of the tenant. I do not accept that she was not served with the one month Notice to End Tenancy. I accept that the tenant was served the notice in person on November 30, 2008 and that the tenant did not dispute the notice. I find that the tenant accepted the end of the tenancy effective December 31, 2008 pursuant to section 47(5) of the *Act*.

On this basis I grant the landlords an Order of Possession effective **January 12, 2009 at 1:00 p.m.** This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I do not accept the tenant's evidence that she gave the key to the rental unit to the landlords. I find that the tenant has lost or misplaced her own key and that she has made no attempt to contact the landlord to gain access to her rental unit. It is incumbent on the tenant to make arrangements to access the rental unit to comply with the Order of Possession.

I have no evidence before me to make any finding as to whether the flooding of the toilet was intentional or accidental.

Conclusion:

I find that the landlord did not have any basis to an Order of Possession based on the grounds of section 56 of the *Act*. However, I have determined that the landlords are entitled to an Order of Possession based on the one month Notice to End Tenancy for cause that the tenant did not dispute.

I deny the landlord's request to recovery the filing fee paid for this application as the landlord would not have been successful on the grounds for which they applied.

Dated January 08, 2009.

Dispute Resolution Officer