



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 matter dealt with an application by the Landlord for an Order ending the tenancy early, an Order of Possession and to recover the filing fee for this proceeding.

The Landlord served the Tenant on December 13, 2008 with a copy of the Application and Notice of Hearing by posting a copy of it on the rental unit door. The Landlord said she believes the Tenant received it because shortly after he arrived at the rental unit, the Notice was no longer on the door. I find pursuant to s. 89 of the Act that the Tenant was properly served with notice of this hearing and the hearing proceeded in his absence.

Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy earlier than what would be required under s. 47 of the Act (ie. Notice to End Tenancy for Cause)?

Background and Evidence

This month to month tenancy started on December 1, 2008. Rent is \$600.00 per month. The Tenant paid a security deposit of \$250.00 at the beginning of the tenancy.

The Landlord claimed that it was a term of the parties' written tenancy agreement that the Tenant would not smoke in the rental unit or on the rental property. The Landlord said despite agreeing to this term and being given a number of verbal warnings and one written warning dated December 8, 2008, the Tenant continues to smoke in the rental unit. The Landlord claimed that she has serious allergies to cigarette smoke and in support provided a letter from her physician. The Landlord also provided a letter from her employer corroborating her evidence that she has been suffering from allergy-related illnesses since December 2, 2008. The Landlord claimed that because the Tenant continues to smoke in the rental unit, she has been forced to live with a friend.

The Landlord also claimed that the Tenant changed the locks on the rental unit without her consent and refuses to give her a key.

Analysis

Section 56 of the Act says that a Landlord may apply to end a tenancy early if she meets the criteria set out in that section and it would be unfair or unreasonable for the Landlord to have to wait for a Notice under s. 47 of the Act to take effect.

In the absence of any evidence from the Tenant, I find that the Tenant has been smoking in the rental unit in breach of the tenancy agreement. I also find that as a result of the Tenant smoking, the Landlord has developed significant allergic reactions which prevents her from residing on the residential property. As a result, I find that the Tenant has seriously jeopardized the health, safety or lawful right or interest of the Landlord who is another occupant of the residential property. I also find that the Tenant changed the locks on the rental unit without the consent of the Landlord and refuses to provide her with a key in breach of s. 31(2) of the Act. In changing the locks, I find that the Tenant has significantly interfered with the Landlord. I also find that it would be unfair for the Landlord to have to wait for a notice to end the tenancy under section 47 to take effect. Consequently, I find that the Landlord is entitled to end the tenancy early. The Landlord requested and I find she is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

Pursuant to s. 62(3) of the Act, I also order the Tenant to provide the Landlord with a key to the new lock on the rental unit within 48 hours of the date of this decision. If the Tenant fails to provide the Landlord with a key to the rental unit within 48 hours, the Landlord may have the locks changed and deduct the cost of having to do so from the Tenant's security deposit.

As the Landlord has been successful in this matter, I find she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from the Tenant's security deposit.

Conclusion

The Landlord's application for an order ending the tenancy early is granted. An Order of Possession to take effect 48 hours after service of it on the Tenant has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.