



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPC, FF

Introduction

The hearing was scheduled in response to the an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that she personally served the female Tenant with copies of the Application for Dispute Resolution and Notice of Hearing at approximately 1630 hours on February 11, 2009. She stated her son was present when these documents were served, although the son was not called as a witness. These documents are deemed to have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenants did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession or Cause and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Act*.

Background and Evidence

The Landlord stated that this tenancy began on December 01, 2008. The Landlord stated that she personally served the male Tenant with a One Month Notice to End Tenancy for Cause on January 31, 2009 when he came to her home to pay the rent. The One Month Notice to End Tenancy for Cause indicated that the Landlord was ending the tenancy because the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord. The Notice informed the Tenants that they must vacate the rental unit by February 28, 2009.

The Notice to End Tenancy for Cause informed the Tenants that they must move out of the rental unit by the date set out on the front page of the Notice if they do not dispute the Notice within ten days of receiving it. I have no evidence that the Tenants disputed the Notice to End Tenancy.

The Landlord stated that she and the Tenants mutually agreed that the tenancy would end on March 30, 2008. She stated that the Tenants paid their rent for March, at which time she provided them with a receipt to show that the rent was being accepted for “use and occupancy only”.

Analysis

In the absence of evidence to the contrary, I find that the Tenants received a One Month Notice to End Tenancy for Cause, pursuant to section 47 of the Act, which required them to vacate the rental unit prior on, or before, February 28, 2009.

Section 47(5) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence that the Tenants filed an application to dispute the Notice to End Tenancy, I find that the Tenants accepted that the tenancy was ending on February 28, 2009, pursuant to section 47(5) of the *Act*.

In the absence of evidence to the contrary, I find that the Landlord and the Tenants mutually agreed to extend the end date of their tenancy to March 31, 2009. On that basis, I will grant the Landlord an Order of Possession for March 31, 2009.

I decline to award the Landlord compensation for the cost of filing this Application for Dispute Resolution, as I find there is insufficient evidence to establish that the Tenants will not vacate the rental unit at the end of March, or that they would not have vacated at the end of February if a mutual agreement to end the tenancy on March had not been reached.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on March 31, 2009. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

Date of Decision: March 26, 2009.
