



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes,

OPB, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession for a breach of the Tenancy Agreement and a Monetary Order to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the Act. The landlord sent the notice by registered mail on April 08, 2009.

The landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form and make submissions to me. I find that the tenant was properly served pursuant to s. 89 of the Act with notice of this hearing and the hearing proceeded in his absence.

A witness appeared for the landlord and gave affirmed testimony.

Issues(s) to be Decided

- Has the landlord established that there is a breach of the tenancy agreement giving sufficient cause to end the tenancy?
- Whether the Landlord is entitled to an Order of Possession
- Whether the landlord is entitled to a Monetary Order to recover the filing fee

Background and Evidence

This tenancy started on January 01, 2009. Rent is \$500.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$250.00 on January 01, 2009. The landlord rents out the upper portion of his home to five tenants. They each have their own room and shared facilities such as bathrooms, kitchen, living room, dining room and an office/laundry room. The rental unit is fully furnished. The landlord lives in a separate basement suite with his own facilities. The landlord and tenant signed a tenancy agreement for two months to end on March 01, 2009. The agreement sets out how the tenant must conduct himself in the shared areas, respecting the other tenants and landlord and the landlords' property and possessions.

The landlord testifies that the tenant abuses his living conditions and the quiet enjoyment of the other tenants and landlord. The landlord testifies that the tenant has taken the security alarm remote control and has set it off late at night repeatedly waking the landlord and other tenants. The landlord asked the tenant to return the remote control but he refused. This forced the landlord to turn off the security alarm leaving his and his tenants property unprotected.

The other tenants of the house have approached the landlord about this tenant stealing their food, beer and possessions from the kitchen. When they have approached the tenant he has admitted to taking the items and promised to return them. This however, takes some time. The other tenant's representative spoke as a witness to the events and testifies that all the tenants are uncomfortable and worried about approaching this tenant.

The Landlord testifies that all the tenants have the use of a wireless internet connection within the rental unit. However, this tenant wanted a more secure line so ran wires from the router to his own room upstairs creating a hazard on the stairs for the other tenants and causing damage to the door to his room. The witness for the tenants testifies that the tenant has been burning papers in the house and is concerned about a fire risk.

The landlord testifies that a female tenant is worried about the tenant watching pornography in the common areas in full sight of the other tenants. This makes her very uncomfortable and the other tenants feel that this is very disrespectful of their rights. They testify that the tenant takes over the living room and has loud arguments with family members making the rest of the tenants feel uncomfortable and restricting their use of the common areas.

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The tenancy agreement states that only tenants named on the tenancy agreement shall live at the address unless by special agreement with the landlord. The landlord is concerned about the tenants' wife staying over for extended periods when she does not live at the rental unit. However, her name is included on the tenancy agreement therefore; it is deemed that the landlord has agreed in advance to her being at the rental unit.

The landlord testifies about the tenants' use of the landlords' property and areas of the landlords own use such as the garden and parking space. The landlord has repeatedly asked the tenant to respect these areas as they are not included in the rental unit but the landlord testifies that the tenant abuses this when he pleases.

The landlord has sent the tenant e-mails requesting him to abide by the tenancy agreement and move out of the rental unit. However, the landlord has extended the tenancy agreement by accepting rent until April 30, 2009. He has issued a One Month Notice on April 07, 2009 to vacate the rental unit by April 30, 2009. The *Residential Tenancy Act* 47(2) states that the landlord must give the tenant one full months notice to vacate the rental unit. As this is not the case the date the tenant must leave the rental unit by has been amended to May 31, 2009.

Analysis

I find that the tenant was properly served a One Month Notice to End Tenancy. The tenant had a right to dispute this Notice by filing an application for Dispute Resolution at the Residential Tenancy Branch within 10 days of receiving the Notice. As the tenant did not file an application for Dispute Resolution within 10 days he is presumed to have accepted this notice and must move out of the rental unit by the amended date of May 31, 2009

A" tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, the landlord had agreed a move out date with the tenant was per the rental agreement for March 01, 2009. The landlord has extended the time because the tenant has refused to move out and by accepting rent until April 30, 2009 he has voluntarily extended the tenancy until that time.

I find that the landlords request for an order of possession will be upheld. The tenant has not observed sections of the tenancy agreement as to the end of tenancy date, the use of common areas and for the respect of other tenants, landlord and neighbors. The landlord has conclusively proven that the tenant has significantly interfered with and unreasonable disturbed other occupants and the landlord of the residential property.



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S 47(d)(1) of the Act. Therefore, the tenant must vacate the rental unit by May 31, 2009.

In the absence of any evidence from the Tenant, I find that the Landlord is entitled to an Order of Possession and to recover the filing fees from the tenant for the cost of this application.

Conclusion

The landlord has been granted an Order of Possession that is effective on **May 31, 2009**. This order must be served on the tenant, once served; this Order can be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord has been granted a Monetary Order for **\$50.00** to recover the filing fee for this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 23, 2009.

Dispute Resolution Officer