



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPC & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession further to a one month Notice to End Tenancy for Cause which was served on the tenants. Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession after serving the tenants with a one month Notice to End Tenancy for Cause?

Background and Evidence

The parties entered into an oral tenancy agreement effective October 1, 2008 for the monthly rent of \$820.00. The rent was subsequently lowered to \$770.00 a month. The tenants paid a security deposit of \$410.00 on October 1, 2008.

The landlord served the tenants with a one month Notice to End Tenancy for Cause on April 30, 2009 in person following a Dispute Resolution Hearing conducted that day on file number 732593. The tenants do not dispute that the notice was served.

Analysis

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*.

Section 47 (4) of the *Act* provides that a tenant(s) served with notice has ten (10) days in which to file an application for Dispute Resolution to challenge the notice. Section 47 (5) of the *Act* states that if a tenant(s) does not dispute the notice in the ten (10) days provided then the tenant(s) will be conclusively presumed to have accepted the end of the tenancy on the effective date of the notice.



Dispute Resolution Services

Page: 2

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I accept that the tenants were served in person with the notice on April 30, 2009. As the landlord put in an incorrect effective date on the notice, I have amended the effective date of the notice to May 31, 2009 pursuant to section 53 of the *Act*.

I accept that the tenants are conclusively presumed to have accepted the end of the tenancy as of May 31, 2009 pursuant to section 47(5) of the *Act*. I also accept the oral evidence of the landlord that any rent received by the tenants since serving the notice has been for "use and occupancy only" and that the tenancy has not been reinstated.

Based on these determinations I grant the landlord's application for an Order of Possession effective **July 31, 2009 at 1:00 p.m.** This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I also grant the landlord's request to recover the \$50.00 filing fee paid for this application from the tenants by deducting it from the tenants' security deposit plus interest pursuant to sections 38 and 72 of the *Act*.

Conclusion

The landlord's application for an Order of Possession has been granted on the basis that the tenants failed to dispute the one month Notice to End Tenancy for Cause.

Dated: July 13, 2009.

Dispute Resolution Officer