



Dispute Resolution Services

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

Decision

Dispute Codes: OPR, CNC, OPT, FF

Introduction

This hearing dealt with two applications: 1) from the landlord for an order of possession and recovery of the filing fee; 2) from the tenant for cancellation of the notice to end tenancy for unpaid rent, and an order of possession for the unit. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to an order of possession and recovery of the filing fee
- Whether the tenant is entitled to cancellation of the notice to end tenancy, and an order of possession

Background and Evidence

The tenancy is thought to have begun as early as sometime in 1985. Current rent of \$635.00 is due on the first day of the month. A security deposit of \$175.00 was collected at the start of tenancy.

As a result of overdue rent for May 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated May 2, 2009. The notice was served in person on the tenant on that same date. A copy of the notice was submitted into evidence.

Subsequently, the tenant made two installment payments, the first on May 10 and the second on May 19, 2009. In the case of each installment payment, the landlord issued a receipt to the tenant which included the notation: "For use and occupancy only – does not reinstate tenancy."

In her application the tenant claims, in part:

Non-payment of rent occurred only because tenant's bank card was used to withdraw money without her permission. When tenant found out tenant took steps to clarify situation, and provided partial rent five days later and then paid the remaining amount on May 19th. Landlord accepted payments for May but still enforcing eviction notice and extended eviction date for May 31.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated May 2, 2009. The tenant did not pay the entire amount of outstanding rent within 5 days of receiving the notice. Neither did the tenant apply to dispute the notice within 5 days of receiving the notice. The tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, I find that the landlord is entitled to an order of possession. During the hearing it was agreed between the parties that the *order of possession* will be effective July 31, 2009.

As for the filing fees, the landlord withdrew the application for recovery of same, and the tenant did not apply for recovery of same.

Conclusion

Pursuant to all of the above, I hereby issue an order of possession in favour of the landlord effective not later than 1:00 p.m., Friday, July 31, 2009. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application for cancellation of the notice to end tenancy, and an order of possession is hereby dismissed.

DATE: July 8, 2009

Dispute Resolution Officer