

Decision

Dispute Codes:

OPC FF

Introduction

This is the Landlords' application for an Order of Possession for Cause; and to recover the filing fee from the Tenant for the cost of the Application.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlords gave the following testimony and documentary evidence:

The Landlords issued a One Month Notice to End Tenancy for Cause on September 1, 2009. The Landlords served the Notice on the Tenant by leaving a copy of the document with an adult person who apparently resides with the Tenant at the Tenant's residence on September 1, 2009.

The Landlords served the Tenant with the Notice of Hearing documents by personally serving the Tenant with the documents on October 2, 2009.

A copy of the Notice to End Tenancy, together with a copy of the tenancy agreement and 2 warning letters to the Tenant dated March 22, 2009 and May 19, 2009, were entered in evidence.

The Landlord asked for a monetary order for unpaid rent for October, 2009, and loss of rent for November, 2009.

The Tenant gave the following testimony:

The Tenant testified that she was not served with the Notice to End Tenancy. She stated that the Landlords had talked to her about the Notice, but she did not get a copy until she was served with copies of the Landlords' evidence.

The Landlords' Witness gave the following testimony:

The Landlords' Witness testified that he saw a 24 hour Notice for Access to the Tenant's suite posted on her door at the rental unit on or about October 1, 2009. The Landlords' Witness confirmed that he was present when the Landlords served the Tenant's room mate with the Notice to End Tenancy on September 1, 2009.

Analysis

Based on the testimony of the Landlords and the Landlords' Witness, I accept that the Landlords served the Tenant with the Notice to End Tenancy, pursuant to the provisions of Section 88(e) of the Act, on September 1, 2009. The tenancy agreement provides that rent was due on the 1st day of each month. The One Month Notice to End Tenancy was served on September 1, 2009, and therefore pursuant to Section 47(2) of the Act, the effective date of the end of tenancy was October 31, 2009. The Tenant did not file an Application to cancel the Notice to End Tenancy within 10 days of being served with

the Notice. Therefore, pursuant to Section 47(5) of the Act, the Tenant is deemed to have accepted that the tenancy ended on October 31, 2009. The Landlords are entitled to an Order of Possession, and I make that Order.

The Landlords asked for a monetary order however the Landlords did not apply for a monetary order in their Application for Dispute Resolution. The Landlords are at liberty to file another application for a monetary order, if they so desire.

The Landlords' application has been successful and therefore the Landlords are entitled to recover the cost of the filing fee from the Tenant. Pursuant to Section 72 of the Act, the Landlords may retain \$50.00 from the security deposit. The remainder of the security deposit remains available for application by either party, to be administered in accordance with the provisions of Section 38 of the Act.

Conclusion

I hereby grant the Landlord an Order of Possession, **effective 2 days after service of the Order upon the Tenant**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords may retain \$50.00 from the security deposit paid by the Tenant. The remainder of the security deposit remains available for application by either party, to be administered in accordance with the provisions of Section 38 of the Act.

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: November 17, 2009.
