

Decision

Dispute Codes: ET / OP, FF

Introduction

This hearing dealt with an application from the landlord for an early end to tenancy and an order of possession, in addition to recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite the landlord's affirmed testimony that the application for dispute resolution and notice of hearing were served in person to him on December 16, 2009, tenant "SG" did not appear.

Despite the landlord's affirmed testimony that the application for dispute resolution and notice of hearing were left at the tenant's residence on December 16, 2009 with an adult who apparently resides with her, tenant "CJ" did not appear.

Issues to be decided

- Whether the landlord is entitled to either or both of the above under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the original term of tenancy was from November 23, 2004 to December 1, 2005. Thereafter, tenancy has continued on a month-to-month basis. Rent in the amount of \$1,100.00 is payable in advance on the first day of each month. A security deposit of \$500.00 was collected on November 23, 2004.

Arising from rent which was unpaid when due on December 1, 2009, the landlord issued a 10 day notice to end tenancy for unpaid rent dated December 2, 2009. Further, the landlord issued a 1 month notice to end tenancy for cause dated December 2, 2009.

Reasons shown on the 1 month notice for its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property

Tenant has caused extraordinary damage to the unit / site or property / park

Tenant has not done required repairs of damage to the unit / site

Tenant has assigned or sublet the rental unit / site without landlord's written consent

Both notices were served by way of registered mail.

Subsequently, the tenants have made no further payment towards rent. The landlord and tenant "SG" then signed a "Mutual Agreement to End a Tenancy" dated December 4, 2009, and tenant "SG" is understood to have vacated the unit. However, tenant "CG" remains in the unit along with occupant "KD."

In addition to other concerns related to the conduct of the tenants and the safety, security and well being of the unit and other residents in the building, the landlord's application for an early end to tenancy and an order of possession arises out of the attendance of police to the unit and the discovery of weapons and drugs.

Analysis

Based on the documentary evidence and undisputed testimony of the landlord, I find that the tenants were served with both, a 10 day notice to end tenancy for unpaid rent dated December 2, 2009, and a 1 month notice to end tenancy for cause dated December 2, 2009. The tenants did not pay the outstanding rent within 5 days of receiving the 10 day notice and did not apply to dispute the notice. Neither did the tenants apply to dispute the 1 month notice within 10 days following its receipt. The tenants are therefore conclusively presumed under section 46(5) and 47(5) of the Act to have accepted that the tenancy ended on the effective dates of the respective notices.

Section 56 of the Act addresses **Application for order ending tenancy early**, and provides in part, as follows:

56(1) A landlord may make an application for dispute resolution to request an order

- (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and
- (b) granting the landlord an order of possession in respect of the rental unit.

Flowing from section 56(3) of the Act, after due consideration of the documentary evidence and the undisputed testimony of the landlord, I am satisfied that "it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect."

Accordingly, pursuant to all of the above, I find that the landlord is entitled to an early end to tenancy and an order of possession.

As the landlord has succeeded in his application, I order that the landlord may recover the filing fee by way of withholding \$50.00 from the security deposit.

Conclusion

Pursuant to all of the above, I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service upon the tenants. This order must be served on the tenants. Should the tenants 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.

I hereby order that the landlord may withhold **\$50.00** from the security deposit for recovery of the filing fee.

DATE: December 23, 2009

Dispute Resolution Officer