

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

This hearing was convened by conference call to deal with the landlord's application for an Order of Possession for cause, a monetary order for unpaid rent, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended and gave evidence at the hearing, however, the tenant did not attend.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession under the *Residential Tenancy Act*?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord's application for money owed for damage or loss under the *Act*, regulations or tenancy agreement justified?

Background and Evidence

This tenancy began 3 or 4 years ago, and the tenant is still residing in the unit. The landlord testified that he served the amended Application for Dispute Resolution by posting it to the door of the residence on February 25, 2010. He further testified that he served the 1 Month Notice to End Tenancy for Cause by posting it to the door of the residence on September 30, 2009. That Notice was submitted as evidence, and shows a move-out date of October 30, 2009.

The landlord further testified that he is collecting rent in the amount of \$500.00 for the unit on a month-to-month basis. The unit is a suite in a basement of a house, and

another basement suite also exists in that house. At the time the Application for Dispute Resolution was filed, the tenant was in arrears \$100.00 for unpaid rent for February, 2010 and \$500.00 for March rent, but the tenant paid \$600.00 on or about February 27, 2010 and is no longer in arrears.

The Notice to End Tenancy states that the reason for issuing the Notice is “Rental unit/site must be vacated to comply with a government order.” The landlord also submitted in evidence a letter from the Bylaw & Business Licencing Division of the City of Port Coquitlam that states that only one secondary suite is permitted per residential property and additional suites are contrary to uses permitted in the zoning bylaw. The letter also instructs the landlord to remove the 220 wiring back to the box by a certified electrician and to remove all cooking appliances from that suite. The landlord testified that he showed the letter to the tenant in an effort to have the tenant vacate the unit, but the tenant simply moved the fridge and stove to the landlord’s storage area. Further, the landlord had the electric work done as ordered by the City of Port Coquitlam, but the tenant still resides in the unit.

Analysis

I find that the landlord did issue the correct notice to end the tenancy to the tenant for the reasons given in his testimony, but did not act on it by applying for dispute resolution within a reasonable time. The landlord continued to collect rent from the tenant since the date that the unit was to be vacated by the tenant, but did not issue a receipt for “Use and Occupancy Only” and the tenancy is therefore determined to be reinstated.

The landlord can serve another 1 Month Notice to End Tenancy for Cause as long as it’s done within Section 47 of the *Residential Tenancy Act*, which states as follows:

- 47 (3)** A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the tenant receives the notice,
 - (b) not earlier than the last day tenant is employed by the landlord, and

(c) the day before the day in the month, or in the other period on which the tenancy is based, that rent, if any is payable under the tenancy agreement.

The landlord must then apply for dispute resolution within a reasonable time after the date the tenancy ends in the notice. I am enclosing a booklet entitled "A Guide for Landlords and Tenants in British Columbia to assist the landlord for future tenancies.

Conclusion

The landlord's application is dismissed in its entirety.

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: March 23, 2010.

Dispute Resolution Officer