

DECISION

Dispute Codes: CNC, OPC and FF

Introduction

These applications were brought by the landlord and the tenant.

By application of January 29, 2010, the landlord seeks an Order of Possession pursuant to a Notice to End Tenancy for cause served on January 27, 2010 and setting an end of tenancy date of February 28, 2010. The landlord further sought to recover the filing fee for his proceeding from the tenant.

By application of January 28, 2010, the tenant seeks to have set aside the same notice to end the tenancy.

Despite having made application and having received notice of the landlord's application, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

Issues to be Decided

These applications require a decision on whether a Notice to End tenancy should be upheld and supported with an Order of Possession or whether it should be set aside.

Background and Evidence

This tenancy began on October 1, 2009. Rent is \$600 per month and the landlord holds a security deposit of \$300 paid on October 1, 2009.

During the hearing, the landlord's agent gave evidence that she sought to end the tenancy on the grounds that the tenant had breached a material term of the rental agreement, a crime free addendum prohibiting use of illegal substances on the rental property on penalty of termination of the tenancy.

She stated that, despite numerous cautions, the tenant had continued to smoke marijuana on the balcony of the rental unit.

She further stated that she had been advised by other tenants that the subject applicant had vacated the rental unit in mid-February, although he had not given notice, or returned the key. She said that the tenant had vacated with the patio door left open to the elements but that the landlord had been reluctant to enter the rental unit without an Order of Possession. In addition, there is no master key to the unit.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause. I accept the evidence of the landlord that the tenant breached a material term of the rental agreement and that the Notice to End Tenancy was valid.

Given that the tenant made application, but did not attend the hearing, and given evidence that he has vacated the rental unit, I find that the tenant has accepted that the tenancy concluded on February 28, 2010.

In view of the risk to the rental unit due to the patio door being left open, I hereby order and authorize that the landlord may engage a locksmith to gain entry to the rental unit immediately and ensure that the rental unit is secured.

I further find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant and I order that service is deemed to have been made when a copy of the order is placed on the door or in a conspicuous place in the rental unit.

The landlord may recover the filing fee for this proceeding by retaining \$50 from the tenant's security deposit.

Conclusion

The landlord is authorized to gain entry to the rental unit on receipt of this decision, and is issued with an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from placement on the door to or in the rental unit. The landlord may retain the filing fee from the tenant's security deposit.

The landlord remains at liberty to make application for unpaid rent and loss of rent and any damage as may be ascertain when she has regained possession of the rental unit.

March 11, 2010