

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession for cause and for recovery of the filing fee paid for this application. The tenant did not appear at the hearing. The landlord affirmed that he personally served the tenant with the Application for Dispute Resolution and Notice of Hearing in person on March 28, 2010 in the presence of a witness. The landlord affirmed that the tenant was served with the landlord's evidence package in person on May 3, 2010 in the presence of a witness. Having been satisfied the landlord sufficiently served the tenant with the hearing documents in a manner that complies with the Act, I proceeded to hear from the landlord without the tenant present.

The landlord's application was made on March 25, 2010 with respect to a 1 Month Notice to End Tenancy for Cause issued on February 28, 2010. The landlord's evidence included the February 28, 2010 Notice and a 1 Month Notice to End Tenancy for Cause issued March 30, 2010. The landlord had not amended the Application for Dispute Resolution to include the March 30, 2010 Notice and this decision pertains to the February 28, 2010 Notice only.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testified as follows. The tenant has been residing in the rental unit since approximately 1990. The tenant is required to pay rent of \$989.00 on the 1st day of

every month. On February 15, 2010 the landlord inspected the rental unit and served a letter to the tenant on February 16, 2010 to identify unsafe and hazardous living conditions related to the excessive clutter in the rental unit. The landlord instructed the tenant to clear items from the rental unit by February 28, 2010 and notified the tenant a follow up inspection would take place at 6:00 p.m. on February 28, 2010. On February 28, 2010 the tenant failed to appear for the inspection and the landlord could not gain entry to the unit. A *1 Month Notice to End Tenancy for Cause* (the Notice) was issued February 28, 2010 and placed in the tenant's mailslot in the presence of a witness. The landlord left a small portion of the document showing on the outside of the door and watched to see the document pulled in a few minutes later. The Notice indicates an effective date of March 31, 2010 and that the reason for ending the tenancy is that the tenant has:

- Put the landlord's property at significant risk; and,
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant did not dispute the Notice. The landlord explained that the excessive clutter has created a significant fire hazard for the residential property. As well, the landlord testified that rent cheques were accepted for April 2010 and May 2010 for use and occupancy only and that was communicated to the tenant by letter and noted on the rent cheques. The landlord was agreeable to permit the tenant until May 31, 2010 to vacate the rental unit.

As evidence for the hearing, the landlord submitted photographs of the rental unit taken February 15, 2010; correspondence to the tenant regarding inspections and violations of health and safety requirements; the Notice to End Tenancy issued February 28, 2010; and, rent cheques accepted for April and May 2010. Other correspondence related to incidents after the issuance of the February 28, 2010 Notice are not relevant to this hearing and have not been considered.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause by giving a 1 Month Notice to End Tenancy in the approved form. A tenant who receives such a Notice is permitted to dispute the Notice within 10 days of receiving the Notice. Upon review of the evidence, I find the landlord served a Notice, in the approved form, upon the tenant. Since the Notice was left in the tenant's mailslot on February 28, 2010, section 90 of the Act deems that it was served three days later which is March 3, 2010 in this case and the effective date is automatically changed to read April 30, 2010 under section 53 of the Act.

The Act provides that where a tenant does not dispute a Notice to End Tenancy for Cause within 10 days of receiving the Notice, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date.

Upon review of the evidence before me, I am satisfied that the landlord had grounds to issue the Notice for cause and since the tenant did not dispute the Notice I am satisfied the tenancy as of April 30, 2010. Since the tenant continues to reside in the rental unit, I find the landlord is entitled to an Order of Possession.

With this decision, I provide the landlord with an Order of Possession effective May 31, 2010. The landlord must serve the Order of Possession upon the tenant and may enforce it through The Supreme Court of British Columbia.

As the landlord was successful in this application, I authorize the landlord to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective May 31, 2010 to serve upon the tenant. The landlord is authorized to deduct the filing fee from the tenant's security deposit.

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: May 11, 2010.

Dispute Resolution Officer