

DECISION

Dispute Codes

OPC, FF

Introduction

This is the Landlord's application for an Order of Possession for Cause; and to recover the cost of the filing fee from the Tenants.

The Landlord and the Tenant's agent gave affirmed testimony at the Hearing.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the Notice to End Tenancy for Cause issued April 25, 2010?

Background and Evidence

The rental unit is the basement suite of a house. The Landlord and his wife live in the upstairs of the house.

The Landlord provided the following documents in evidence:

- Copy of a note from his physician dated March 13, 2010, stating that the Landlord must avoid second hand smoke at all times for medical reasons;
- Letter to Tenants dated March 25, 2010, explaining that the second hand smoke from the Tenant's suite is giving the Landlord chest pains and a sore throat;
- Copy of a receipt dated March 27, 2010, indicating that the Landlord returned the security deposit in the amount of \$350.00 to the Tenants and
- Copy of a One Month Notice to End Tenancy for Cause issued April 25, 2010;

The Landlord testified that he served the Tenants with the Notice to End Tenancy on April 25, 2010, at the rental unit with a witness present.

The Tenants' agent stated that she had been provided with the Notice of Hearing documents last night and therefore did not have the time to prepare for the Hearing or to arrange for the presence of an interpreter. The Tenants' agent stated that the Tenants were refugees and that the Tenant "KB" (hereinafter referred to as "KB") had been appointed as their "caretaker" and she was not a Tenant under the tenancy agreement. "KB" had merely found the Tenants the basement suite. The Tenants' agent testified that she had not had any communication with "KB" with respect to the Hearing and did not know why "KB" was not present at the Hearing.

The Landlord testified that "KB" was living at the rental unit and had advised him at the end of March that the Tenants would be moving out of the rental unit on April 15, 2010.

The Landlord testified that he refunded the Tenants' security deposit in full in order that they would be in a financial position to move. When the Tenants had not moved by April 15, 2010, the Landlord asked "KB" when they would be moving and she told him they wouldn't. Therefore, the Landlord issued the Notice to End Tenancy.

The Tenants' agent testified that the Tenants wanted to move out of the rental unit and were seeking alternate accommodation.

Analysis

Based on the testimony of both parties, I am satisfied that the Tenants were served with the Notice to End Tenancy on April 25, 2010. I am satisfied that the Tenants were served with the Notice of Hearing documents on May 25, 2010. The Tenants had ample opportunity to provide an agent with instructions prior to the Hearing.

The Tenants did not file an application to cancel the Notice to End Tenancy within 10 days of being served with the Notice and therefore, pursuant to the provisions of Section 47(4) of the Residential Tenancy Act, they are deemed to have accepted that the tenancy ended on May 31, 2010. The Landlord is entitled to an Order of Possession and I make that Order **effective two (2) days after service of the Order upon the Tenants.**

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenants. I hereby provide the Landlord with a Monetary Order against the Tenants in the amount of \$50.00.

Conclusion

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

I hereby grant the Landlord a Monetary Order in the amount of \$50.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 09, 2010.

Dispute Resolution Officer