



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of Possession for Cause and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The Agent for the landlord provided affirmed testimony that on July 9, 2010, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and copy of the receipt was provided as evidence of service.

These documents are deemed to have been served in accordance with section 89 of the Act; however the tenant did not appear at the hearing.

Issue(s) to be Decided

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on July 14, 2008, market rent was \$1,200.00. Clause 11 of the tenancy agreement submitted as evidence indicated that the rent is due in advance by 4 p.m. on the last day of each calendar month and provided, as an example; July rent must be paid by June 30th.

On June 8, 2010, the landlord wrote the tenant a letter warning her that rent was due on the first day of each month and that she had paid late in April, May and June, 2010. The landlord provided copies of 10 day Notices issued on May 3, April 6 and June 2, 2010; for unpaid rent owed on the first day of each month.

The tenant paid April 2010, rent on April 8; May rent was paid on May 10 and June rent was not paid. The tenant was late paying her rent on one other occasion, but the landlord did not know if that had been in December 2009 or January 2010.

On July 2, 2010, the landlord issued and served the tenant a 1 month Notice to end tenancy for cause as the result of repeated late rent payments. The landlord served this Notice on July 2, 2010, at 9:30 a.m. through the tenant's mail slot.

The tenant has not paid rent since May, 2010.

Analysis

In the absence of evidence to the contrary, I find that the tenant was served with a Notice ending the tenancy for cause that requires the tenant to vacate the rental unit on August 31, 2010, pursuant to section 47 of the Act.

Section 47 of the Act stipulates that a tenant has ten (10) days from the date of receiving the Notice to End Tenancy to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised this right.

Therefore, pursuant to section 47(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after service to the tenant.

I clarified the rent due date with the landlord, as the evidence of Notices and written warning contradicted the rent due date contained in the signed tenancy agreement. Even if the rent was due on the first day of each month, the landlord's testimony that the tenant has been repeatedly late paying her rent on 3 occasions since March, 2010; would support the reason indicated on the Notice issued as those payments were made either after the 1st of each month or not made at all. Even if the tenant had thought rent was due on the first day of the month, the evidence before me supports the reason indicated on the Notice.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution and I grant the landlord a monetary Order in that amount. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court 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: August 30, 2010.

Dispute Resolution Officer