

DECISION

Dispute Codes OPC, OPB, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause and for a breach of a material term of the tenancy pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue - Service of Documents

The landlord and the tenant disagree as to how the One Month Notice to End Tenancy for Cause was served to the tenant. The landlord testified that he posted a One Month Notice to End Tenancy for Cause on the tenant's door on July 21, 2010. The tenant testified that this notice was deposited underneath her door and that she did not receive this until she returned from out of town on August 4, 2010.

Section 89(2) of the *Act* allows service of a notice to end tenancy by posting on a door. Placing a notice to end tenancy under a door is not one of the ways to provide service under section 89(2). Since the tenant testified that she did receive this notice, I am satisfied that the landlord served this notice to the tenant.

The landlord testified that he posted the application for dispute resolution on the tenant's door on August 18, 2010. Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution: *89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord has not served the landlord in a manner required by section 89(1) of the Act. However, as the tenant testified that she did receive this application, I am satisfied that the tenant was served with the landlord's application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to recover his filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this month-to-month tenancy commenced on February 1, 2010. Rent was set at \$750.00 per month, payable on the first of each month. The landlord testified that he continues to hold the tenant's \$375.00 security deposit, paid on February 1, 2010.

The landlord's One Month Notice to End Tenancy for Cause cited the following two reasons for seeking an end to this tenancy:

- Tenant or a person permitted on the property by the tenant has:
significantly interfered with or unreasonably disturbed another occupant or the landlord...
- Tenant has engaged in illegal activity that has, or is likely to:

adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord...

The landlord testified that the tenant told him on July 21, 2010 that she was planning to vacate the rental premises by August 31, 2010. He said that she phoned him on July 25, 2010 to let him know that another individual, DJR, would write a letter to the landlord on her behalf to formally confirm that she would be vacating the premises on August 31, 2010. He entered into evidence a copy of a July 26, 2010 letter from DJR confirming that he was acting as the tenant's "proxy" and that he was giving notice on her behalf to vacate the rental premises as of August 31, 2010. The landlord testified that the tenant subsequently told him that she had changed her mind because she had not earned enough money to move to another location.

The tenant testified that she never gave DJR permission to send a letter to the landlord notifying him that she was ending her tenancy. She also said that the landlord provided no adequate explanation for why he sent the notice to end tenancy.

Analysis

I am not convinced by the landlord's evidence that the tenant has breached a material term of her tenancy agreement. The landlord has testified that he spoke with the tenant a number of times in July and that he received DJR's written statement that he was acting as the tenant's "proxy" in notifying the landlord that the tenant was ending her tenancy. Without any written authorization from the tenant allowing DJR to act as her representative in matters relating to this tenancy, I find that the tenant did not provide notice to the landlord that she was intending to vacate the rental premises on August 31, 2010.

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the One Month Notice to End Tenancy for Cause. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice, August 31, 2010. As she did not

vacate the rental premises by that date, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by one o'clock in the afternoon on September 30, 2010, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant the landlord an Order of Possession. As the landlord has been successful in his application, I allow him to deduct \$50.00 from the tenant's security deposit to recover his filing fee for this application.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.