



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF, CNC, CNR

Introduction

This hearing dealt with applications from the landlord and the tenant pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for an Order of Possession for cause pursuant to section 55 and for recovery of the filing fee for this application from the tenant pursuant to section 72. The tenant applied to cancel the landlord's 1 Month Notice to End Tenancy for Cause, to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, and to recover her filing fees for this application from the landlord pursuant to section 72.

As the landlord accepted the tenant's August 2010 rent payment on August 25, 2010 and did not apply for dispute resolution based on the 10 Day Notice to End Tenancy issued on August 6, 2010, there was no need to consider the tenant's application for cancellation of the landlord's 10 Day Notice to End Tenancy. Since the tenant's filing fee for this application was waived, there was no need to consider her application for recovery of her filing fee.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she sent both individuals shown on the tenancy agreement a 1 Month Notice to End Tenancy for Cause in a registered letter on August 6, 2010. She provided the Canada Post Tracking Numbers for both letters. She said that two letters were sent because the tenant's spouse has not been removed from the tenancy agreement following his death. The landlord testified that she posted the application for dispute resolution package on the tenant's door and placed another copy through the tenant's door opening. The tenant confirmed that she had received both of these documents. As I am satisfied that the

tenant received the notice to end tenancy and the application for dispute resolution hearing package, I proceeded to hear the landlord's application for an Order of Possession.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for late payment of rent? Is the landlord entitled to recover her filing fees for this application from the tenant?

Background and Evidence

The landlord testified that this fixed-term tenancy commenced on October 1, 2008 for a one-year period. Following September 30, 2009, this converted to a month-to-month tenancy. The rent of \$900.00 was to be paid on the first of each month. The landlord continues to hold the tenant's \$450.00 security deposit paid on October 1, 2008.

The landlord testified that there has been a lengthy history of late payment of rent since this tenancy began. The landlord cited seven examples of late rent payments in the 23 months of this tenancy. She noted that the tenants did not pay their initial rent payment in October 2008 until October 22, 2008. She testified that \$552.00 remains owing for the tenant's September 2010 rent.

The tenant gave sworn testimony to contest some of the dates cited by the landlord. However, she confirmed that the landlord did not receive the full rent for March 2010 until March 5, 2010, for June 2010 until June 17, 2010, for August 2010 until August 25, 2010. She confirmed the landlord's claim that rent is still outstanding for September 2010.

Analysis

Based on the evidence of both parties, I find that the tenant's rent has been chronically late. I therefore find that the landlord had cause to issue the 1 Month Notice to End Tenancy for late payment of rent. I dismiss the tenant's application to cancel that Notice. I find that the landlord is entitled to a 2 day Order of Possession. The landlord

will be given a formal Order of Possession which must be served on the tenant. As the male tenant is deceased, I issue the Order of Possession to the sole remaining individual listed on this tenancy. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I dismiss the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause. I grant a 2 Day Order of Possession to the landlord. As the landlord has been successful in this application, I allow the landlord to recover the filing fee for the landlord's application by retaining \$50.00 from the tenant's security deposit.

As noted above, I dismiss the tenant's application for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent and the tenant's application to recover her filing fee.

The landlord is provided with a formal copy of an Order of Possession. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: September 10, 2010

Dispute Resolution Officer