



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlords' application for an Order of Possession for cause, and to recover the filing fee from the tenants for the cost of this application.

Despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on October 22, 2010, the tenants did not attend the conference call hearing. An agent attended for the landlord, gave affirmed testimony and provided an evidence package in advance of the hearing. A witness also attended for the landlord and gave affirmed testimony. All information provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?

Background and Evidence

The landlords' agent testified that a tenancy agreement was signed by the parties on May 27, 2010, however the tenants moved into the rental unit prior to that date and the parties had a previous tenancy agreement. A copy of the tenancy agreement dated May 27, 2010 was provided in advance of the hearing, which also contains an Addendum. Rent in the amount of \$570.00 per month is payable in advance on the 1st day of each month. She further stated that arrears of rent are owed however no application has yet been made for recovery of those arrears.

The landlords' agent further testified that on March 5, 2010 a letter was issued to the tenants as a caution stating that cigarette butts, empty beer cans and empty beer plastic holders were being dumped through the window of the rental unit to the lane below and that such behaviour would not be tolerated, and contained a reminder that the unit is a no-smoking unit.

On September 3, 2010 another letter was issued to the tenants stating that their futon mattress infested with bed bugs had been dumped through the window of the rental unit to the lane below. The letter further stated that the tenants' actions have compromised the health and safety of the other tenants, and if parties were found to be at fault again, an eviction notice would be issued.

Copies of both notices were provided in advance of the hearing.

The landlords' witness testified that on September 27, 2010 she served a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit. That notice, a copy of which was provided in advance of the hearing, states that the tenants caused extraordinary damage to the unit/site or property/park. The notice has an expected date of vacancy of October 30, 2010. The witness further testified that while conducting an inspection of the rental unit, she discovered that the tenants had been washing clothing in the bathtub and hanging them up over the bathtub without ringing them out causing the water to drip continuously onto the bathroom floor. She stated that the linoleum on the floor has lifted, the floor boards underneath are rotten, and the tenants were told that they could not continue to do their laundry in that fashion. The floor has to be entirely replaced. She further testified that during that inspection, the tenants were smoking inside the rental unit, and provided a photograph of a cup filled with cigarette butts that she testified were inside the rental unit. The tenancy agreement specifies that no smoking is permitted.

She further testified that other tenants had told her that the tenants have been throwing cigarette butts and other debris out of the window of the unit. The caretaker of the

building also told her about it, and that he had witnessed it. She personally witnessed beer cans and cigarette butts directly under the window of the rental unit.

On October 14, 2010 the caretaker personally served the tenants with a copy of the notice to end tenancy that was issued on September 27, 2010. Prior to serving it, the caretaker added a checkmark beside the paragraph that says, "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." He did not amend the date that the form was issued, nor the expected date of vacancy.

The landlord's agents also testified that the tenants have only paid half of the rent for the months of September, October and November, 2010. No receipts were issued to the tenants because the landlord collected that rent money directly from a government ministry.

Analysis

I find that the landlord has established that the tenants have caused significant damage to the rental unit by allowing their dripping laundry to damage the bathroom floor. I accept the evidence of the landlords' witness that the linoleum and floor boards need to be replaced as a result of the conduct of the tenants.

Section 53 (1) of the *Residential Tenancy Act* states that, if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable. Subsection (2) provides that, if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The 1 Month Notice to End Tenancy for Cause issued and served on September 27, 2010 is deemed to be served upon the tenants 3 days after it was posted to the door of the rental unit, being September 30, 2010. Pursuant to Section 53 of the *Residential*

Tenancy Act, I find that the effective date of the notice is October 31, 2010, not October 30, 2010 as written on the notice.

The tenants have not disputed the notice, and did not attend the hearing to defend against the landlords' application, and are therefore presumed to have accepted that the tenancy ends on the effective date of the notice, which I find is October 31, 2010. The landlord is also entitled to recovery of the filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords. The tenants must be served with the Order of Possession. If the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I further grant the landlords a monetary order in the amount of \$50.00 for the cost of this application. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: November 19, 2010.

Dispute Resolution Officer