



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC & FF

Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession after serving the tenant with a 1 month Notice to End Tenancy for Cause.

The landlord appeared for the hearing and provided documentary evidence in advance of the hearing. The landlord provided affirmed oral testimony and presented a witness.

The landlord provided documentary evidence confirming that the tenant had been served with notice of this application and hearing by registered mail on November 15, 2010.

I deem that the tenant received notice on the fifth day after the registered mail was sent pursuant to section 90(a) of the *Act*. I proceeded with the hearing in the tenant's absence.

Issues(s) to be Decided

Is the tenant a 'tenant in common' or a joint tenant with the other occupant of the rental unit?

Is the landlord entitled to an Order of Possession pursuant to section 47(5) of the *Act*?

Background and Evidence

The landlord confirmed that there is no written tenancy agreement. The landlord stated that the tenant began renting at the rental unit on November 1, 2009 for the monthly rent of \$700.00 and a \$350.00 security deposit.

The landlord confirmed that the second occupant of the two bedroom apartment is the tenant's brother. The landlord stated that the tenant's brother is akin to family and does not currently pay any rent. The landlord stated that the tenant's brother has a separate

agreement and has been living with the landlord for a number of years. The landlord has not served the tenant's brother with the 1 month Notice to End Tenancy and has not named the tenant's brother in this application for Dispute Resolution.

The landlord served the tenant the 1 month Notice to End Tenancy for Cause on the grounds that the tenant assigned or sublet the rental unit without the consent or permission of the landlord.

The notice provides that the tenant has the right to dispute the notice within 10 days of receiving the form. The notice also states that if the tenant does not file to dispute the notice, then the tenant is presumed to have accepted the end of the tenancy on the effective date of the notice. The effective date of this 1 month Notice to End Tenancy was November 30, 2010.

The landlord requested an Order of Possession for the rental unit.

Analysis

I find on the balance of probabilities, and based solely on the evidence provided by the landlord, the following:

I accept the landlord's evidence that he had a verbal rental agreement with the tenant. I accept, in the absence of any evidence to the contrary that the tenant and her brother had separate tenancy agreements with the landlord even though they occupied the same two bedroom rental unit. I accept that the tenant paid a monthly rent of \$700.00 and a security deposit of \$350.00.

I find that the tenant and her brother were not joint tenants but were tenants in common. The policy guidelines define tenants in common as follows:

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

Although most tenancies are normally joint tenancies, where all tenants are under one tenancy agreement with the landlord, I accept the oral testimony of the landlord that this was not the circumstances for this tenancy. As a result, I accept that the landlord may end the tenancy of only the tenant.

I accept that the tenant was served with a 1 month Notice to End Tenancy for Cause when it was posted to the door of the rental unit on October 15, 2010. This is a method of service permitted by section 88 of the *Act* and therefore I deem that the tenant received a copy of the notice 3 days later.

With the evidence before me, I find that the tenant did not file an application to dispute the notice to end tenancy. As a result, pursuant to section 47(5) of the *Act* I find that the tenant has conclusively accepted the end of the tenancy and I grant the landlord's request for an Order of Possession.

Conclusion

I have determined that the tenant was a 'tenant in common' and was individually served with a 1 month Notice to End Tenancy for Cause. I have determined that the tenant did not dispute the notice in the 10 day provided and found that the tenant conclusively accepted the end of the tenancy effective November 30, 2010.

I find that the landlord is entitled to an Order of Possession of the rental unit effective **two (2) days** after it has been served upon the tenant. This Order may be filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I grant the landlord's request to recover the \$50.00 filing fee paid for this application from the tenant. The landlord may deduct this sum from the tenant's security deposit which is held in trust by the landlord. The remaining sum of the tenant's security deposit must be dispersed with in accordance with section 38 of the *Act*.

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: December 06, 2010.

Dispute Resolution Officer