



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, to recover the filing fee for this proceeding and to keep the Tenant's security deposit.

At the start of the conference call the Landlord said that she would withdraw the part of her application to retain the Tenant's security deposit as she had included it because of information she received about the application. She said she doesn't have a claim against the deposit at this time. The application to retain the Tenant's security deposit is withdrawn.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery January 11, 2011. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on June 1, 2010 as a 1 year fixed term tenancy with an expiry date of May 31, 2011. Rent is \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a partial security deposit of \$175.00 in June, 2010.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated December 30, 2010 on December 30, 2010 with an effective vacancy date of January 31, 2011. The Landlord continued to say she issued the Notice because the Tenant paid the rent late for September, October and December, 2010, he did not pay the full \$550.00 security deposit, the Tenant's son is living in the unit and he is smoking in the unit, which is not permitted and the smoking presents a significant health risk to the Landlord. The Landlord continued to say the Tenant's son has caused noise violations

by late night partying that required the police to be called in. The Landlord said she wants an Order of Possession for these violations of the tenancy agreement.

The Tenant said he agreed with what the Landlord said. He continued to say that he has been in the hospital and his son has been at home alone so he could not control his son's behaviour. The Tenant said he was sorry that things have gone this way and he hoped the Landlord and him could resolve this without ending the tenancy.

The Landlord said if the Tenant could control the behaviour of his son she may be willing to continue with the tenancy, but at the present time she is requesting an Order of Possession as she is frustrated with the son's behaviour because he is breaking the terms of the tenancy agreement.

Analysis

Section 47(b) says a landlord may end a tenancy by giving a notice to end tenancy if the Tenant does not pay the security deposit in full, if rent payments are repeatedly late and if the tenant or occupants unreasonable disturbs the landlord or seriously jeopardizes the health or safety of the landlord.

The Landlord provided testimony and rent payment receipts as evidence that the Tenant has been late with the rent 3 times, which under the Residential Tenancy Policy guideline # 38 is grounds to end the tenancy. As well the Tenant agreed he has not paid the full \$550.00 that was due as the security deposit and that his son has been smoking and causing noise violations in the rental unit. I find that the Landlord has established grounds to receive an Order of Possession.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on the day it was served, or on December 30, 2010. Consequently, the Tenant would have had to apply to dispute the Notice by January 10, 2010.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that as the Landlord was successful in this matter she is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain \$50.00 from the Tenant's security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession may be enforced in 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: January 26, 2011.

Residential Tenancy Branch