



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, OPB, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an Application by the Landlord for an Order of Possession, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on August 31, 2010. Rent is \$1,050.00 per month payable in advance on the last day of each month. The Tenant paid a security deposit of \$525.00 but did not pay a required pet deposit of \$200.00.

On November 29, 2010, the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated November 29, 2010 by leaving it in his mail box. The Tenant said he received this Notice approximately a week later. The Tenant also said he did not apply for dispute resolution to cancel the Notice because he was planning on moving out on the effective date stated on the Notice, December 31, 2010.

The Landlord claimed that it was a term of the tenancy agreement that the rental unit was non-smoking. The Landlord said she also made this clear to the Tenant when he applied to rent the rental unit because the other tenants of the rental property were allergic to smoke. The Landlord claims that starting in October of 2010, the Tenant began smoking in the rental unit and that as a result, the other tenants of the rental property moved out on November 30, 2010. The Landlord said the rental unit was newly renovated at the beginning of the tenancy with new paint and carpets and she now expects that she will have to incur expenses to remove the lingering smell of smoke from the rental unit before it can be re-rented. The Landlord admitted that she did not yet know what these expenses would be and withdrew her claim for them.

Analysis

Section 47(4) of the Act states that a Tenant who receives a One Month Notice to End Tenancy for Cause must **within 10 days of receiving** a Notice apply for dispute resolution to cancel the Notice or pursuant to s. 47(5) of the Act, he is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and he 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 3 days after it was put in his mail box or on December 2, 2010. Consequently, the Tenant would have had to apply to dispute the One Month Notice no later than December 12, 2010. I find that the Tenant has not applied for dispute resolution to cancel the Notice.

Given that the Tenant was deemed to have received the One Month Notice on December 2, 2010, I find that the earliest date the Notice could take effect would be January 31, 2011. Consequently, the effective date of the Notice must be amended pursuant to s. 53 of the Act to January 31, 2011 which is also the earliest date that an Order of Possession can take effect. 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 at 1:00 p.m. on January 31, 2011.

As the Landlord's application would not have been necessary had the Tenant vacated when he agreed to, I also find that the Landlord is entitled to recover from the Tenant the \$50.00 filing fee for this proceeding as well as her registered mail services expenses. However the receipt provided by the Landlord for the latter item includes a number of other items which appear to have nothing to do with service expenses. Consequently, I award the Landlord \$8.90 for her registered mail expense. I order pursuant to s. 72 of the Act that the Landlord may deduct the amount of \$58.90 from the Tenant's security deposit. The Landlord's application to keep the balance of the Tenant's security deposit is dismissed with leave to reapply.

Conclusion

The Landlord's application for compensation for damages to the rental unit is withdrawn. The Landlord's application to keep the Tenant's security deposit is dismissed with leave to reapply.

An Order of Possession to take effect on January 31, 2011 has been issued to the Landlord. A copy of the Order must be served on the Tenant and 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 25, 2011.

Residential Tenancy Branch