



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes: OPC; MND; MNSD; FF

Introduction

This is the Landlord's application for an Order of Possession; a Monetary Order for damages to the rental unit; to retain the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that he served the Tenant with the Notice of Hearing documents on December 31, 2010, by handing the documents to the Tenant at the rental unit with a witness present.

Based on the affirmed testimony of the Landlord, I am satisfied that the Tenant was served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for damages to the rental unit?

Background and Evidence

The Landlord gave the following testimony and documentary evidence:

The Landlord testified that he served the Tenant with a One Month Notice to End Tenancy for Cause by:

- Posting the Notice to the Tenants' door on December 4, 2010;
- Hand delivering the Notice to the Tenant at the rental unit on December 4, 2010;
and
- Mailing the Notice, by registered mail, to the Tenant at the rental unit on December 8, 2010.

The Landlord testified that the registered mail documents were returned to him "refused". The Landlord provided a copy of the registered mail receipt, tracking number and returned envelope in evidence.

The Landlord testified that the Tenant has caused damage to the rental unit by breaking doors, kitchen cabinets and blinds. The Landlord testified that the Tenant has ruined the carpets in the rental unit.

The Landlord testified that the Tenant is smoking in the rental unit and has unauthorized pets.

The Landlord testified that he is not sure about the extent of the damage and will not be able to fully assess it until the Tenant has moved out.

Analysis

Pursuant to the provisions of Section 90 of the Act service by posting a document to the Tenant's door is deemed to be effected three days after posting the documents.

Service by registered mail is deemed to be effected five days after mailing the documents, whether or not the recipient chooses to accept delivery of the documents.

Based on the affirmed testimony and documentary evidence provided by the Landlord, I find that the Tenant was served with the One Month Notice to End Tenancy for Cause:

on December 4, 2010, by personal service; on December 7, 2010 by posting it on the Tenant's door; and on December 13, 2010, by registered mail.

Section 47(4) of the Act provides that a Tenant may dispute a Notice to End Tenancy for Cause by making an Application for Dispute Resolution within 10 days of receiving the Notice. Section 47(5) of the Act states that if the Tenant does not file an Application within 10 days of receiving the Notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit on that date. The Tenant has not filed an Application to cancel the Notice.

Pursuant to the provisions of Section 47(2) of the Act, I find that the effective date of the One Month Notice to End Tenancy is January 31, 2011. The Landlord is entitled to an Order of Possession effective January 31, 2011.

With respect to the Landlord's monetary claim, I find that it is premature. This portion of the Landlord's claim is dismissed with leave to reapply.

The Landlord has been partially successful in his claim and is entitled to recover the cost of the filing fee from the Tenant. Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this award.

Conclusion

I hereby grant the Landlord an Order of Possession **effective 1:00 p.m., January 31, 2011**. This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct \$50.00 from the security deposit, representing recovery of the filing fee from the Tenant.

The Landlord's application for a Monetary Order for damages to the rental unit and to apply the remainder of the security deposit towards partial satisfaction of his award for damages is dismissed with leave to reapply.

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 20, 2011.
