



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by posting it on the Tenant’s door on February 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 in the absence of the Tenant.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started on October 1, 2010 as a month to month tenancy. Rent is \$365.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$187.50 on October 1, 2010.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 19, 2011. She served the Notice on January 19, 2011 by posting it on the Tenant’s door. The Notice was deemed to be received on January 22, 2011, three days after posting the Notice on the Tenant’s door. The Effective Vacancy date on the Notice is February 28, 2011. The Landlord said the Tenant is living in the unit at the present time.

The Landlord continued to say that the Tenant has not made an application to dispute the 1 Month Notice to End Tenancy for Cause within the 10 day limit allowed under the Act; therefore she is requesting an Order of Possession. The Landlord said the Tenant has told the Landlord’s representative and other tenants that he is not moving out of the rental unit.

Analysis

Section 47(4) says a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this situation the Tenant is deemed to have received the notice on January 22, 2011 so consequently the Tenant would have had to make his application by February 1, 2011 to dispute the notice. The Tenant did not make an application to dispute the notice.

Section 47(5) says a tenant who has received a notice under this section and does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) Is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) Must vacate the rental unit by that date.

I find that the Tenant has not applied for dispute resolution and did not attend the Hearing scheduled on February 21, 2011 to present any defence therefore; I find for the Landlord and grant an Order of Possession with an effective date of February 28, 2011.

As the Landlord has been successful in this matter I order the Landlord to recover the filing fee for this proceeding by retaining \$50.00 of the Tenant's security deposit.

Conclusion

An Order of Possession effective February 28, 2011 has been issued to the Landlord. A copy of the Orders 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*.

Residential Tenancy Branch