

DECISION

Dispute Codes OPC, OPB, MNSD, FF

Introduction

This is an application by the Landlord for an order of possession resulting from a 1 month notice to end tenancy for cause and the request for a monetary order to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

At the beginning of the hearing, the Tenant was seeking an adjournment of 8 weeks due to health issues. The Tenant did not provide any details of the health issues other than that his Doctor recommended that he go to the Caribbean to rest. The Tenant did not provide any documentary proof of this or any other reasons why he could not proceed. The Landlord disputes this as a delaying tactic and that there should be no reason why the hearing could not proceed. The Tenant's application to adjourn the hearing is denied. The Tenant has not displayed during the conference call hearing of any loss that would occur if the hearing continued.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order?

Background and Evidence

The Landlord states that the Tenant was served a 1 month notice to end the tenancy for cause on December 28, 2010 in person as shown in the submitted proof of service dated February 1, 2011. The Landlord also states that the hearing documents were also served in person on February 1, 2011. The Tenant confirms receipt of the documents, but disputes that he misunderstood the content.

The Landlord is also seeking to keep all or part of the \$314.00 security deposit as the Tenant has painted the rental unit a different color in the past and has not returned it to that original color.

Analysis

I find that the Tenant was properly served with the notice to end the tenancy by personal service on December 28, 2010. The Tenant confirmed receipt of the notice to end tenancy during direct evidence. The Tenant has not filed an application for dispute resolution within the allowed 10 days of receiving the notice. The Tenant is therefore presumed to accept that the tenancy has ended.

I also find that the Tenant was properly served with the hearing documents. The Tenant has agreed during direct evidence of receiving the documents.

Based upon the above facts, I find that the Landlord is entitled to an order of possession. The Tenant must be served with the order of possession. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, I find that the Landlord is premature in applying for the security deposit as the Tenant is still in possession and is still able to comply with the obligations of the signed tenancy agreement. This portion of the Landlord's application is dismissed with leave to reapply. The Landlord may re-apply after the end of tenancy if this issue is not resolved.

The Landlord is entitled to the recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted an order of possession and a monetary order for \$50.00.

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: February 14, 2011.

Residential Tenancy Branch