



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

OPC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession (for Cause) - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

At the outset of this hearing the landlord amended their claim on application by withdrawing their monetary claim, and their claim on application in respect to an order of Possession due to Unpaid Rent.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in today's conference call hearing. The landlord provided proof of registered mail service for the Notice of Hearing via a receipt for the registered mail sent on March 11, 2011 and a tracking number for same. The landlord testified that he received confirmation that the tenant received the registered mail on March 14, 2011.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed testimony in this matter refers to a history of dispute resolution hearings in respect to this tenancy – the last of which was resolved by agreement of the parties on February 28, 2011 – a copy of which was entered by the landlord into evidence.

The landlord also testified that on January 14, 2011 they sent the tenant a One Month Notice to End Tenancy for Cause (Notice to End) for the reason that the tenant is repeatedly late paying rent. The landlord provided a copy of the Notice to End as well as proof of registered mail service for the Notice to End via a receipt for the registered mail sent on January 14, 2011 and a tracking number for same. The landlord testified that the registered mail was returned as unclaimed. The landlord testified that the February 28, 2011 agreement lists, in part, that on or before March 07, 2011 the tenant would provide the landlord's agent with twelve post-dated cheques for the rent for the term, but that the tenant has not met this condition of the agreement.

Analysis

Based on the landlord's testimony and document evidence I find that the tenant was served with a notice to end tenancy for Cause and I find the notice to be valid. The tenant has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I note that on the effective date of the Notice to End the parties entered into the aforementioned agreement on February 28, 2011 which, in part, recorded the parties' agreement as follows:

7. Upon the tenant providing the post-dated cheques, the landlord's outstanding one month Notice to End for repeated late payment of rent shall be void.

The undisputed evidence is that in the absence of the tenant meeting this term of their agreement of February 28, 2011, I find the Notice to End has not been voided and remains in full force. The time afforded by the Act to dispute the Notice to End has lapsed.

Based on all the above facts I find that the landlord is entitled to an **Order of Possession**.

As the landlord has been successful in their claim the landlord is entitled to recovery of the **\$50** filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord **effective two (2) days** from the day it is served upon the tenant. The tenant must be served with this **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.

I order that the landlord may deduct **\$50** from the tenant security deposit in satisfaction of the filing fee.

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*.