

DECISION

Dispute Codes:

OPQ; FF

Introduction

This is the Landlord's application for an Order of Possession and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's agent gave the following testimony:

The rental unit is situated in a subsidized building. The Landlord is required by BC Housing to house people with children. The Tenant no longer qualifies for subsidized housing at the rental unit because he has lost day to day custody of his teenage son, who has not lived in the rental unit for 90 days. The Landlord seeks to end the tenancy in order to comply with the requirements of BC Housing.

The Landlord issued a 2 Month Notice to End Tenancy (the "Notice") on January 20, 2011. The Landlord's agent posted the Notice on the Tenant's door, with a witness present, on January 25, 2011. The Landlord's agent also mailed a copy of the Notice, by regular mail, to the Tenant on January 25, 2011.

On February 8, 15 and March 3, 2011, the Tenant told the Landlord's agent that he will not be moving out and therefore the Landlord filed its application to ensure that he would move at the end of March, 2011.

The Tenant gave the following testimony:

The Tenant was in hospital from January 22, 2011, until the beginning of February so he did not receive the Notice until the beginning of February, 2011. (The Landlord stated that the Tenant was discharged on February 3, 2011, and the Tenant did not dispute that fact.) He did not file an application to cancel the Notice because he was ill and had to go back into hospital 1 ½ weeks later. The Tenant received the Landlord's Notice of Hearing documents and was discharged from the Hospital on March 11, 2011, but did not file an application to cancel the Notice. The Tenant thought that by providing documentary evidence and attending this telephone conference, he was indicating that he wanted to cancel the Notice.

The Tenant has an application before the Family Court of British Columbia, to be heard in April, seeking day to day custody of his son.

Analysis

Pursuant to the provisions of Section 90 of the Act, documents served by posting on a door are deemed to be received 3 days after posting. However, in this set of circumstances, I find that there was no reasonable expectation that the Tenant would receive the Notice until he was discharged from hospital on February 3, 2011. Therefore, I find that the Notice was served on February 3, 2011.

Based on the testimony of both parties, I grant the Landlord's application for an Order of Possession for the following reasons:

- The Tenant does not have day-to-day custody of his son. Therefore, the Tenant does not qualify to be housed at the subsidized rental unit.

- The Tenant did not file for dispute resolution within 10 days of receiving the Notice. Therefore, pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Having found that the Notice was served on February 3, 2011, the effective date of the end of tenancy is April 30, 2011.

The Landlord has been successful in its application and is entitled to recover the cost of the \$50.00 filing fee from the Tenant.

Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct \$50.00 from the security deposit.

Conclusion

I hereby grant the Landlord an Order of Possession effective 1:00 p.m., April 30, 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.

I authorize the Landlord to deduct \$50.00 from the security deposit in satisfaction of its monetary award for recovery 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.

Dated: March 21, 2011.
