



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession; and
2. An Order to recover the filing fee pursuant to Section 72.

Both parties appeared at the hearing of this matter. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession and recovery of the filing fee paid for this application.

Background and Findings

The landlord testified that she served the Notice to End Tenancy for Cause on the tenant on two occasions. First she says she served it on the tenant in person on April 25, 2011. Then she served it again by posting it to the rental unit door. The landlord now requests an Order of Possession based on that Notice to End Tenancy.

The tenant acknowledges receiving the Notice to end Tenancy for Cause which he found taped to the rental unit door on April 31, 2011. The tenant testified that he has not filed an Application seeking to dispute the Notice. The tenant says he telephoned the Residential Tenancy Branch and was advised that he had until May 16, 2011 to dispute the Notice. The tenant says that he was served with the landlord's Application for Dispute Resolution and Notice of Hearing he did not believe he had to dispute the Notice to End Tenancy and did not do so.

Analysis and Findings

Section 47 of the *Residential Tenancy Act* states in part:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(c) there are an unreasonable number of occupants in a rental unit;

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(4) 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.

(5) If a tenant who has received a notice under this section 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.

The Notice to end Tenancy Given for Cause served on the tenant states, under the title "Information for Tenants who receive this Notice to End Tenancy" as follows:

- You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. A Dispute Resolution officer may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept this Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.). If you do not file an Application, move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

Further, the tenant testified that he called the Residential Tenancy Branch and was informed that he would need to file an Application for Dispute Resolution seeking to dispute the Notice to End Tenancy for Cause by May 16, 2011.

Despite the provisions of Section 47(4) and (5) of the Act; despite the instructions on the Notice to End Tenancy and despite the advice the tenant says was provided to him by the Residential Tenancy Branch, the tenant did not file an Application seeking to dispute the Notice to End Tenancy Given for Cause.

The tenant is therefore is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and he must vacate the rental unit. The effective date on the Notice to End Tenancy is May 31, 2011. The landlord is entitled to an Order of Possession.

Having been successful in this application the landlord is also entitled to recover the filing fee paid for this application.

Conclusion

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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*.
