

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause. The tenant did not attend this hearing, although I waited until 11:22 p.m. in order to enable him to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that he handed the tenant a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on February 27, 2011. He testified that he handed the tenant a copy of his dispute resolution hearing package on June 9, 2011. The landlord's wife, Witness VK, testified that she witnessed her husband hand both of these sets of documents to the tenant on the dates noted above. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the hearing, the landlord testified that he faxed a copy of the 1 Month Notice to the Residential Tenancy Branch (the RTB) shortly after he applied for dispute resolution. As the RTB had no record of receiving this fax, I asked the landlord to send this by fax again before 4:00 p.m. on the day of this hearing. After the hearing, the landlord faxed a copy of the 1 Month Notice to the RTB.

Issues(s) to be Decided

Is the landlord entitled to end this tenancy for cause and obtain an Order of Possession?

Background and Evidence

This month-to-month tenancy commenced on January 1, 2011. Monthly rent is set at \$600.00, payable in advance on the first of each month. The landlord continues to retain the tenant's \$300.00 security deposit paid on or about January 1, 2011.

The landlord testified that he issued the 1 Month Notice to the tenant because the tenant exceeded the allowed number of people residing in this 1 bedroom rental unit. He said that the Residential Tenancy Agreement only allows one tenant in this small rental unit and that the tenant has had at least two people and currently three people living in this unit from time to time. He said that three people are living in this rental unit as of the day of this hearing.

The landlord and one of his daughters, Witness RK, also testified that there is lots of noise originating in the rental unit. The landlord said that the police have been called a number of times to address concerns of excessive noise and disturbance.

Analysis

The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice to End Tenancy for Cause. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 31, 2011. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of 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*.