



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for Landlord's Use of Property; a Monetary Order for unpaid rent and damage to the unit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. She testified that she served the Notice of a Dispute Resolution Hearing to the tenant in person on July 8th, 2011. The landlord testified that on July 17th, 2011 the tenant said that she would be moving out on the date of the hearing and that she would not attend the hearing. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite in a single detached home.

There was no written agreement to this month to month tenancy which started on July 1st, 2010. The rent was \$1000.00 per month and the tenant paid a security deposit of \$500.00.

The landlord stated that since the filing of her application for dispute resolution, the tenant paid rent for July 2011 and therefore this portion of her claim is withdrawn. Concerning damages, the landlord said that she heard no activity or indication that the tenant is in fact moving out today; nevertheless, the landlord's claim for damages was not supported with any documentary evidence and in that regard, this portion of her claim is premature and dismissed with leave to reapply.

The landlord stated that the rental unit will be occupied by her son; she provided a copy of the 2 Month Notice to End Tenancy that she served personally on the tenant on April 26th, 2011, with an effective date of July 1st, 2011.

Analysis

I accept the landlord's undisputed testimony that she served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 49(9) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for landlord's use of property does not make an application for dispute resolution within 15 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. Therefore the landlord is entitled to an order of possession.

Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant. If necessary, 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.

Since the landlord's application had merit, she is entitled to recover the \$50.00 filing fee which I authorize her to deduct from the tenant's \$500.00 security deposit.

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: July 28, 2011.

Residential Tenancy Branch