



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MN, 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. A monetary Order; and
3. 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

Is the landlord is entitled to an Order of Possession and monetary Order?

Background and Findings

The landlord testified that he served the Notice to End Tenancy for Cause on the tenant in person on June 25, 2011. 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. The tenant testified that she has been served with several notices which she has disputed however she did not dispute this particular Notice to End Tenancy for Cause because the landlord told her he would not be proceeding with his application.

The landlord submitted that he did not tell the tenant he did not intend to proceed with this matter.

Analysis and Findings

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

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

(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;

(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.

(emphasis added)

The Notice to end Tenancy Give 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.

Despite the provisions of Section 47(4) and (5) of the Act; despite the instructions on the Notice to End Tenancy the tenant did not file an Application seeking to dispute the Notice to End Tenancy Given for Cause. As to the tenant's testimony that she did not apply to dispute the Notice because the landlord told her he would not be proceeding with it, the landlord has denied making this statement and the tenant has failed to provide sufficient evidence to support a finding that the landlord agreed to drop this claim.

I therefore find that in failing to make an application seeking to dispute the Notice within the required time frame the tenant is conclusively presumed to have accepted that this tenancy ended on the effective date of the notice and she must vacate the rental unit.

The effective date on the Notice to End Tenancy is June 26, 2011, as this date is in correct the effective date of the Notice would automatically correct to July 31, 2011. As that date has passed the landlord is entitled to an immediate Order of Possession. The parties discussed the effective date of the Order and the landlord agreed to extend the time to vacate until August 31, 2011. An Order of Possession will therefore be issued effective on that date.

The landlord testified that his monetary claim was for July's rent which has now been paid. This claim is therefore dismissed.

Having been successful in this application the landlord is entitled to recover the filing fee paid for this application. I direct the landlord to withhold \$50.00 from the security deposit he holds on behalf of the tenant.

Conclusion

The landlord is provided with a formal copy of an order of possession. 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*.