

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:55 a.m. in order to enable her 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 she handed a 2 Month Notice to End Tenancy for Unpaid Rent (the 2 Month Notice) to the tenant on June 30, 2011. She entered into written evidence a copy of a witnessed statement regarding her service of this document to the tenant at 11:00 a.m. on June 30, 2011. The landlord testified that she posted a copy of her dispute resolution hearing package on the tenant's door at 4:00 p.m. on September 6, 2011. She provided a witnessed statement from the agent who attended the hearing attesting to this method of serving the tenant with this package. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, the landlord and her agent attempted to add a request for a monetary award for unpaid rent to this application. Although the landlord had completed a monetary award worksheet as part of the written evidence she provided to the tenant as well as copies of a number of 10 Day Notices to End Tenancy for Unpaid Rent, she submitted no amended application for dispute resolution. Posting an application for dispute resolution for a monetary award on a tenant's door is not one of the methods permitted under the *Act* to serve an application for a monetary award to a tenant. In addition, I find that the landlord has not properly alerted the tenant to the fact that she is seeking a monetary award or for an end to this tenancy on the basis of unpaid rent or utilities. For these reasons, I advised the landlord at the hearing that I was unwilling to amend her application for dispute resolution to include a request for a monetary award. The landlord remains at liberty to submit a new application for dispute resolution for a monetary award.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the rental unit? Is the landlord entitled to recover her filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy commenced on February 1, 2010. Monthly rent is set at \$1,050.00, payable in advance on the first of each month. The tenant is responsible for 40% of the utility charges for this rental property. The landlord currently holds the tenant's \$525.00 security deposit paid on February 1, 2010.

The landlord testified that she presently lives on the ground floor of this rental property. She said that she intends to occupy the entire property herself and convert it to an owner-occupied residence.

Analysis

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of her tenancy on August 31, 2011 and required her to vacate the rental premises by that date. 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.

As the landlord has been successful in her application, I find that she is entitled to recover her filing fee from the tenant. To recover this filing fee, I allow the landlord to retain \$50.00 from the tenant's security deposit.

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.

I allow the landlord to recover her filing fee for this application from the tenant by allowing the landlord to retain \$50.00 from the tenant's security deposit. The revised value of the tenant's security deposit is now \$475.00.

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*.