



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF
 CNR CNC O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel a Notice to end tenancy for unpaid rent, to cancel a Notice to end tenancy for cause, and for other reasons.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession as a result of that breach, pursuant to section 55 of the *Residential Tenancy Act*?
3. Has the Tenant made application to cancel the 10 Day Notice and the 1 Month Notice within the required timeframes set out in the *Residential Tenancy Act*?

Background and Evidence

The parties agreed that the Tenant occupied the rental house from September 2010 to June 14, 2011 as the Landlord's roommate, sharing common space of the kitchen and bathroom. The Landlord vacated the property on June 4, 2011 and the parties entered into a written month to month tenancy agreement that began on June 15, 2011 with rent payable on the first of each month in the amount of \$800.00.

Sometime between September 2010 and June 14, 2011 the parties entered into a verbal agreement whereby the Tenant would pay the Landlord some extra money that could be put towards the purchase of the home at sometime in the future. The parties agreed that in September 2011 this verbal agreement for the sale/purchase of the house was cancelled and any extra money that had been paid by the Tenant up to that point was all applied to his October 1, 2011 rent payment.

The Landlord affirmed that October 1, 2011 rent was paid in full and after having a 10 Day Notice to end Tenancy served to the Tenant on November 1, 2011, he paid his November rent in full on November 3, 2011.

The Landlord is seeking an Order of Possession for as soon as possible based on the 1 Month Notice to End Tenancy for Cause that was personally served to the Tenant by a real estate agent on October 19, 2011.

The Tenant confirmed receipt of the 1 Month Notice for Cause that was personally served to him by a real estate agent on October 19, 2011. He further confirmed making his application for dispute resolution at a Service BC office on November 3, 2011. He stated that he did not make his application sooner because he has been working fulltime out of town.

Analysis

I called jurisdiction into question pertaining to the alleged offer to sell/purchase the property. As both parties agreed there was no offer to sell or purchase agreement between them as of the end of September 2011 and that this arrangement converted to a regular tenancy agreement I accepted jurisdiction of the matter pursuant to section 2 of the *Residential Tenancy Act*.

The 10 Day Notice is of no force or effect as the Tenant paid his November 1, 2011 rent within 5 days of receiving the 10 Day Notice.

Upon review of the 1 Month Notice to End Tenancy for Cause, I find the Notice was issued and served upon the Tenant in a manner that complies with the Act. The notice was received by the Tenant on October 19, 2011, and the effective date of the notice is therefore November 30, 2011, pursuant to sections 47 (2) and 53 of the *Act*. The Tenant did not file his application to dispute the 1 Month Notice until November 3, 2011, fifteen days after receiving the Notice.

I accept the evidence before me that the Tenant has failed to dispute the Notice within the 10 days granted under section 47 (4) of the *Act*. Based on the foregoing, I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the Notice and I hereby grant the Landlord an Order of Possession effective **November 30, 2011**.

The Landlord has been successful with her application, therefore I award her recovery of the **\$50.00** filing fee.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **November 30, 2011 at 1:00 p.m. after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Tenant.

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: November 24, 2011.

Residential Tenancy Branch