



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC and FF

Introduction

This application was brought by the landlord on November 8, 2011 seeking an Order of Possession pursuant to a one-month Notice to End Tenancy for cause served on October 21, 2011 and setting an end of tenancy date of November 30, 2011. The notice cited repeated late payment as cause to end the tenancy. The landlord also sought to recover the filing fee for this proceeding from the tenants.

Despite having been served with the Notice of Hearing by registered mail sent on November 10, 2011, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to an Order of Possession as requested and recovery of his filing fee from the tenants.

Background and Evidence

The landlord stated that this tenancy was current when he took possession of the rental building on or about August 1, 2008. Rent is currently \$716 per month due on the first. The landlord stated there had been an original security deposit of \$350 and that some amount had been surrendered to the previous landlord but he did not have the record available at the hearing.

During the hearing, the landlord submitted evidence that, after the tenants had been frequently late paying rent throughout the tenancy including the last eight months in succession.

The landlord also gave evidence that he had issued 10-day Notice to End Tenancy on previous occasions and had given verbal and emailed warnings that continued late payment would result in the tenancy ending.

The landlord stated that the tenants have advised him that they have found new accommodation and will be vacating the rental unit on November 30, 2011; however, the landlord requested the Order of Possession for assurance.

Analysis

Section 47(1)(b) of the *Act* provides that a landlord may issue a one-month notice to end tenancy for cause if a tenant is repeatedly late paying rent. As a matter of practice, three late payments within twelve months are considered sufficient to establish repeated late payment.

In the present matter, I find that the tenants' rent was late on at least eight occasions in the current year.

Section 47(5) of the *Act* states that, if a tenant who receives a notice to end tenancy for cause does not make application to contest the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice which was November 30, 2011.

As the subject tenants did not make application to contest the notice to end tenancy, I find that the landlord is entitled to an Order of Possession to take effect on end date stated on the Notice to End Tenancy.

I further find that the landlord is entitled to recover the filing fee for this proceeding by retaining \$50 of the security deposit. The balance of the deposit remains to be disposed of in compliance with section 38 of the *Act*.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on November 30, 2011.

The landlord is authorized to retain \$50 of the tenant's security deposit to recover the filing fee for this proceeding.

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 25, 2011.

Residential Tenancy Branch