



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided some documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

Both parties agree that this month to month tenancy started on April 01, 2011. Rent for this unit is \$950.00 per month and is due on the first day of each month.

The landlord testifies that in September, 2011 the tenant had a party at his rental unit and invited a lot of people to the party. Some of the tenants guests smoked in the rental unit even through the tenant was aware that there was no smoking allowed in the unit. The landlord testifies that he received complaints from a neighbour about the loud noise from

the party and the tenant was sent a warning letter concerning this. The landlord has not provided a copy of this letter in evidence. The landlord testifies that no other incidents have occurred.

The landlord testifies that he and his family live in the unit upstairs to the tenant. He states the tenant has been smoking and the smoke disturbs the landlord and his family. The landlord states he has spoken to the tenant about smoking in the unit but has not given the tenant a warning letter. The landlord testifies that he served the tenant with a One Month Notice to End Tenancy on October 03, 2011. This Notice has an effective date of October 31, 2011 and gave the following two reasons to end the tenancy:

- 1) *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,*
- 2) *The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

The tenant testifies that he did hold a party in September, 2011 and apologised to the landlord after the party. The tenant states he has not had a party since that time and has not disturbed the neighbours or the landlord. The tenant also disputes the landlord's testimony that he has been smoking in the unit and testifies that he smokes outside the house. The tenant states that during his party some friends did start to smoke inside his unit but the tenant states he told them they had to go outside. The tenant testifies that he does not even smoke close to the house but smokes by the picnic table. The tenant agrees that he did not dispute the One Month Notice to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on October 03, 2011. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act* and the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. The landlord has been provided with a Monetary Order for this sum. This Order must be served upon the Respondent and may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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: December 28, 2011.

Residential Tenancy Branch