



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, 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. 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

Whether the landlord is entitled to an Order of Possession and recovery of the filing fee paid for this application.

Background and Findings

The landlord testified that he served the Notice to End Tenancy for Cause on the tenant in person on September 27, 2011. The tenant acknowledged receiving the Notice to End Tenancy on that date. The tenant submitted that he did file an Application seeking to dispute that Notice on October 6, 2011 under file No. 780322. The hearing of that application was scheduled for November 2, 2011. It is the tenant/applicant's responsibility to serve the respondent with Notice of the hearing. The landlord submitted that he had no knowledge of the hearing. Indeed in a decision rendered on November 2, 2011 the Dispute Resolution Officer dismissed the tenant's application because neither party appeared at the hearing. While the application was dismissed with leave to reapply such a dismissal does not grant an extension of any time limits set out in the Act for filing applications for dispute resolution.

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.

While the tenant did file an application seeking to dispute the Notice he did not attend at the hearing of the matter to perfect his application. That application was dismissed and the time for filing an application seeking to dispute the Notice to End Tenancy served on September 27, 2011 has now expired. The tenant is therefore is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and he must vacate the rental unit.

The effective date on the Notice to End Tenancy is October 31, 2011. The landlord testified that he still wishes to end this tenancy. As the effective date on the Notice has passed the landlord is entitled to an immediate Order of Possession as requested. I will however grant the tenants 2 days following service of the Order to vacate the premises.

Having been successful in this application the landlord is also entitled to recover the filing fee paid for this application. I will issue an Order in this regard.

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.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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*.

Dated: November 22, 2011.

Residential Tenancy Branch