



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession.

The hearing was conducted via teleconference and was attended by two agents for the landlord, the tenant did not attend

The landlord's agent testified she served the tenant with the notice of hearing documents, pursuant to Section 59(3) of the Residential Tenancy Act (Act) by registered mail on December 30, 2011 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on this testimony, I accept the tenant has been sufficiently served with notice of this hearing.

At the outset of the hearing I confirmed with the agents that the landlord was seeking to end the tenancy based on a 1 Month Notice to End Tenancy for Cause that did not include the cause of breaching an agreement and as such, I amend the landlord's Application to seek an order of possession based on cause and not a breach of an agreement.

The agents also submitted additional evidence that the tenant has failed to pay rent for January 2012 and were hoping to amend the Application to include a monetary order for unpaid rent, however, as there was no monetary order applied for in the original Application I find it would be prejudicial, in the absence of the tenant, to proceed on a matter that he was not aware of prior to the hearing. I denied the request for this amendment.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for repeated late payment of rent; to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by both parties for a 1 year fixed term tenancy agreement beginning on June 1, 2006 that converted to a month to month tenancy agreement on June 1, 2007 for the current monthly rent of \$1,732.00, with a security deposit of \$787.50 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause dated December 14, 2011 with an effective vacancy dated of January 31, 2012 citing the tenant is repeatedly late paying the rent. The notice states the tenant had 10 days to file an Application for Dispute Resolution if the tenant wished to dispute the Notice.

The landlord submits he served the 1 Month Notice to End Tenancy by posting it on the rental unit door on December 14, 2011 at and that this service was witnessed by a third party.

Analysis

Section 47(1) of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, the tenant is repeatedly late paying rent. Section 47(5) states that if a tenant who has received such a notice does not make an Application for Dispute Resolution the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

As the tenant did not file an Application for Dispute Resolution to dispute the Notice, I find the tenant is deemed to have accepted that the tenancy will end on January 31, 2012. As such, the tenant must vacate the rental unit no later than 1:00 p.m. on January 31, 2012.

Conclusion

I find the landlord is entitled to an order of possession effective **January 31, 2012 after service on the tenant**. This order must be served on the tenant. If the tenant fails to

comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$814.04 in satisfaction of this claim.

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: January 13, 2012.

Residential Tenancy Branch