



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.

The tenant did not appear. The landlord gave evidence that he served the Notice to End Tenancy on the tenant by way of posting the Notice to the rental unit door. The landlord gave evidence that he served the Application for Dispute Resolution and the Notice of this hearing on the tenant by registered mail sent December 23, 2011.

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 December 9, 2011 for repeated late payment of rent.

Analysis and Findings

Section 47 of the *Residential Tenancy Act* states it part:

- (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;

(b) the tenant is repeatedly late paying rent;

(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.

Despite the provisions of Section 47(4) and (5) of the Act; despite the instructions on the Notice to End Tenancy the tenant did not file an Application seeking to dispute the Notice to End Tenancy Given for Cause.

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 January 31, 2012.

Having been successful in this application the landlord is also entitled to recover the filing fee paid for this application. I direct the landlord to withhold \$50.00 from the security deposit he holds on behalf of the tenant.

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 may deduct the \$50.00 filing fee from the tenant's security deposit to realize recovery of the filing fee the landlord has paid for this application.

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 12, 2012.

Residential Tenancy Branch