



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC; FF

Introduction

This is the Landlord's application for an Order of Possession; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord's agent IT testified that she served each of the Tenants with the Notice of Hearing documents by registered mail, sent January 6, 2012, to the rental unit. The Landlord's agent provided the tracking numbers for both of the registered mail envelopes. Based on the undisputed testimony of the Landlord's agent, I find that both of the Tenants were served with the Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's agent gave the following testimony and evidence:

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 1, 2011. Monthly rent is \$1,100.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$550.00 at the beginning of the tenancy.

The Landlord's agent IT testified that she served each of the Tenants with a *One Month Notice to End Tenancy for Cause* (the "Notice") by registered mail sent on November 7, 2011. The Landlord provided copies of the registered mail receipts in evidence.

The Landlord's agent IT stated that the Tenants are disturbing other occupants in the building by being noisy at night and in the early morning hours. She stated that the Tenants have been warned verbally and in writing and that the Landlord issued a notice to end the tenancy in September for the same reasons, but after discussions with the Tenants decided not to pursue and application for an Order of Possession. The Landlord provided a copy of the Notice, a warning letter and the notice issued September 6, 2011, in evidence.

The Tenant gave the following testimony:

The Tenant testified that he received the Notice, but not until about 2 or 3 weeks after it had been issued. He stated that he was not certain whether or not the Tenant TL received the Notice.

The Tenant did not file an application for dispute resolution to cancel the Notice. He stated that he thought he could make that application orally at this Hearing.

The Tenant requested more time to move out of the rental unit.

The Landlord gave the following reply:

The Landlord's asked for an Order of Possession effective February 15, 2012, in order to provide the Tenants more time to find alternative accommodation.

Analysis

I accept that the Landlord served the Tenants with the Notice to End Tenancy by registered mail sent November 7, 2011. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected five days after mailing the documents whether or not the recipient chooses to accept delivery. I find that the Tenants were served with the Notice on November 12, 2011.

Section 66 of the Act allows the director to extend the time limit to make an application, but only in **exceptional** circumstances, and in any event never beyond the effective date of the Notice.

The Notice has clear instructions about what will happen if the Tenants do not file an application to cancel the Notice within 10 days of receiving it. The Tenants did not file an application for dispute resolution, within 10 days of receiving the Notice or at all.

Therefore, pursuant to the provisions of Section 47(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on December 31, 2011. I find that the Landlord is entitled to an Order of Possession, **effective 1:00 p.m., February 15, 2012.**

The Landlord has been successful in its application and is entitled to recover the cost of the **\$50.00** filing fee from the Tenants. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this monetary award.

Conclusion

I hereby provide the Landlord an Order of Possession **effective 1:00 p.m., February 15, 2012**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may deduct **\$50.00** from the security deposit in recovery of the cost of the filing fee.

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 26, 2012.

Residential Tenancy Branch