



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Tenant confirmed at the beginning of the hearing that she received the Landlord's Application and Notice of Hearing on January 5, 2011. The Tenant argued that the Landlord had not served her in a timely manner. However, I find that this is not the case. Section 59 of the Act says that an application for dispute resolution must be served on the other party 3 days after it is filed. I find that the Landlord complied with s. 59 given that she received her hearing packages in this matter on December 28, 2011 and served them by registered mail on December 30, 2011. Consequently, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act.

The Landlord admitted that she did not serve the Tenant with her evidence package containing 2 pages of written submissions and a photograph of a text message on a cellular phone and accordingly the Landlord's evidence package is excluded.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This month-to-month tenancy started on May 1, 2011. Since approximately August 1, 2011, rent has been \$1,200.00 per month which is payable in advance on the 1st calendar day of each month.

The Tenant admitted that she was served in person on November 30, 2011 with a One Month Notice to End Tenancy for Cause dated November 30, 2011. The Tenant said she applied for Dispute Resolution to cancel this Notice on December 13, 2011, however she did not serve the Landlord with her application because she was not aware that she was required to serve a copy of the Application and Notice of Hearing on

the Landlord until January 5, 2012 when she received the Landlord's hearing package. The Tenant admitted that she has withheld her rent for January 2012 because she believes there are some deficiencies in the rental unit.

Analysis

Section 47(4) of the Act says that a Tenant who receives a 10 Day Notice to End Tenancy for Cause must apply for dispute resolution to cancel that Notice no later than 10 days after receiving it. If a Tenant fails to do so, then pursuant to s. 47(5) of the Act a Tenant is deemed to have accepted that the tenancy will end and they must vacate the rental unit on the effective date of the Notice.

I find that the Tenant was served in person on November 30, 2011 with a One Month Notice to End Tenancy for Cause dated November 30, 2011. Although the Tenant filed an application for dispute resolution on December 13, 2011 (within the 10 days granted) to cancel that Notice, she did not complete the Dispute Resolution process by serving a copy of that Application on the Landlord with the effect that her application was deemed abandoned. Consequently, this means that the Tenant has not applied to cancel the One Month Notice to End Tenancy for Cause dated November 30, 2011 and is deemed to have accepted that the tenancy ended on December 31, 2011.

Furthermore, s. 66(1) of the Act says that the director may extend the time for a Tenant to apply to cancel a notice in "exceptional circumstances." However, s. 66(3) of the Act says that the director may not extend the time to apply to cancel a notice beyond the effective date of the Notice. I find that the effective date of the One Month Notice has now expired and therefore the Tenant is now barred under the Act from applying to cancel the One Month Notice. As a result, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession. As the effective date of the Notice has now expired, the Order of Possession will take effect 2 days after service of it on the Tenant.

I also find that there is unpaid rent for January 2012 in the amount of \$1,200.00 and I award the Landlord that amount. As the Landlord has been successful in this matter I further find that she is entitled pursuant to s. 72 of the Act to recover from the Tenant the \$50.00 filing fee she paid for this proceeding.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant and a Monetary Order in the amount of \$1,250.00 have been issued to the Landlord. The Landlord must serve the Tenant with copies of the Orders; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) 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: January 12, 2012.

Residential Tenancy Branch