



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for cause and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

This tenancy began November 1, 2011 with monthly rent of \$700.00 and the tenants paid a security deposit of \$350.00.

On December 22, 2011 the landlord severed the tenants with a 1 Month Notice to End Tenancy for Cause:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- damaged the landlord's property;
- adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The tenants testified that the landlord had reinstated the tenancy after they were served with the notice to end tenancy as the landlord took rent for January and February 2012 without providing the tenants a receipt stating 'for use and occupancy only'. The landlord's agent acknowledged that a receipt had not been given for January but notes that one was provided for February and submitted into evidence.

The tenants on January 1, 2012 gave the landlord written notice to vacate January 31, 2012. On January 10, 2012 the tenants wrote the landlord a new letter stating that they were rescinding the notice to vacate January 31, 2012 and would now be vacating February 28, 2012. The tenants indicate that they will be willing to show the rental unit

to prospective tenants with 1 hour's notice and requested that the landlord advance the tenants \$100.00 from the \$350.00 security deposit to use towards a new rental unit which the landlord did.

The landlord's agent stated that they expected the tenant's to vacate February 28, 2012 as stated on the tenant's notice. The tenants stated that they had a verbal agreement to stay in the rental unit however the landlord's agent refuted this testimony.

The landlord's agent also stated that the tenants continue to disrupt the peace and quiet enjoyment of the landlord.

The landlord's agent in this hearing requested an order of possession effective March 15, 2012 to allow the tenants time to find new housing. The landlord's agent stated that they will ensure that the tenants are responsible for paying only ½ of the March 2012 rent.

Analysis

Based on the documentary evidence and testimony I find that the tenants were properly served with a notice to end tenancy for cause and did not apply for dispute resolution to dispute the notice.

However as the landlord took receipt of rent monies from the tenants after issuance of the notice and did not provide the tenants with a receipt stating *'for use and occupancy only, does not reinstate tenancy'*, (Residential Tenancy Fact Sheet RTB-124, Re-Instatement of Tenancies) the landlord has effectively re-instated the tenancy therefore the landlord's December 22, 2011 notice is set aside.

The tenants however provided the landlord with written notice to vacate effective February 28, 2012 and there is no written agreement between the parties to rescind this notice or to extend the tenancy.

Therefore based on the tenant's notice to end tenancy, the landlord is entitled to an order of possession.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, March 15, 2012**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep \$50.00 of the tenant's security deposit in satisfaction of the 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: February 27, 2012

Residential Tenancy Branch