



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for Cause; a Monetary Order for unpaid rent; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant in person on February 28, 2012. The tenant did not participate and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on June 1, 2009. The rent is \$1070.00 plus \$25.00 for parking per month and the tenant paid a security deposit of \$525.00.

The landlord testified that the tenant was late paying rent 12 times in the last 14 months. In his documentary evidence, the landlord provided a copy of the 1 Month Notice to End Tenancy served on the tenant in person on February 4 2012. The landlord provided a copy of the tenant's ledger in support of his testimony concerning late rent, showing that rent is consistently late and paid by cheques that are regularly returned "NSF" by the bank. The landlord also provided a copy of a warning letter dated September 17, 2011, but the late payment pattern did not change. The landlord said that the tenant was also late paying his rent for March 2012.

The landlord requested an Order of Possession effective March 31, 2012, and a monetary order for April's rent, should the tenant fail to comply with the order.

Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 47(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for cause does not make an application for dispute resolution within 10 days, 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. The tenant in this matter has not filed an application for dispute resolution. On that basis alone the landlord is entitled to an Order of Possession.

In the circumstances, the landlord's application for a monetary order for unpaid rent for April 2012 is premature, given that there is no evidence before me that the tenant will not vacate on March 31, 2012, or that he will not pay the rent even if he does not comply with the order. Consequently I decline to grant the landlord a monetary on the

basis of speculative future events. The landlord is at liberty to reapply in due time, should these conjectures come to fruition.

Conclusion

I grant the landlord an Order of Possession effective no later than 1:00 PM, March 31, 2012.

This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I authorize the landlord to deduct \$50.00 from the security deposit in satisfaction of the filing fee 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: March 14, 2012.

Residential Tenancy Branch