



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF, MT, CNC

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for cause and for the breach of a material term of the residential tenancy agreement pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66; and
- cancellation of the landlord's 1 Month Notice pursuant to section 47.

The tenants did not attend this hearing, although I waited until 3:17 p.m. in order to enable them to connect with this hearing scheduled for 3:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that he handed the tenants the 1 Month Notice on March 29, 2012. This was confirmed in the tenants' application for dispute resolution. The landlord testified that he handed the tenants a copy of the landlord's dispute resolution hearing package on April 16, 2012. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

The landlord testified that the tenants did not serve the landlord with a copy of their dispute resolution hearing package.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Dispute Resolution Officer. The Dispute Resolution Officer may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without liberty to reapply.

At the hearing, the landlord said that he was no longer seeking recovery of the landlord's \$50.00 filing fee from the tenants. At the landlord's request, the landlord's application for recovery of the landlord's filing fee is withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy commenced on October 1, 2011. The tenants' portion of the monthly rent is currently set at \$570.00, payable in advance on the first of each month. The landlord continues to hold a \$425.00 security deposit for this tenancy.

Both parties entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenant to end this tenancy by April 30, 2012, the landlord cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so...

In the landlord's oral and written evidence, he maintained that the tenants had breached the no smoking provision of their tenancy agreement in this smoke-free rental building.

At the hearing, the landlord testified that the tenants appeared to be in the process of vacating the premises on the day of the hearing, the same day as the effective date for the end of their tenancy. He asked for an Order of Possession in case the tenants did not fully vacate the premises.

Analysis

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenants did not apply to dispute the 1 Month Notice within the 10-day time

period for doing so under section 47(4) of the Act. Although they requested an extension of time to file their application, they provided no explanation as to why this extension was required and did not attend the teleconference hearing at the scheduled time and date. In accordance with section 47(5) of the *Act*, the tenants' failure to dispute the landlord's 1 Month Notice within ten days and to attend this hearing led to the end of this tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by April 30, 2012. In case that does not occur, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I find that this tenancy ends on April 30, 2012. I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). 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 tenants' application is dismissed without leave to reapply. The landlord's application to recover the filing fee for the landlord's application is withdrawn.

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: April 30, 2012

Residential Tenancy Branch