



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession to the rental unit due to alleged cause, for authority to retain part of the tenant's security deposit and to recover the filing fee for the application.

The landlord appeared and gave affirmed testimony.

The landlord submitted evidence proving service of the Application for Dispute Resolution and Notice of Hearing (the "hearing package") by registered mail to the tenant on May 31, 2012.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and in documentary form.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The tenant was assigned the balance of an original one year, fixed term tenancy which began on October 1, 2011, said assignment being effective on March 5, 2012, monthly rent is \$1200.00 and the landlord holds a security deposit of \$600.00.

The landlord submitted evidence that the tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice"), dated May 4, 2012, via registered mail on that date, listing an effective end of tenancy on June 30, 2012. The landlord stated that the tenant

did not collect the registered mail, which caused the landlord to issue another Notice, this one dated May 14, 2012, which he delivered to the tenant via her mail slot, on May 14, 2012.

The second Notice listed the same effective end of tenancy date of June 30, 2012.

The Notice explained that the tenant had ten days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The causes as stated on the Notice alleged that the tenant 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, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, put the landlord's property at significant risk, and has engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord's relevant evidence included a copy of the two 1 Month Notices to End Tenancy for Cause, a form K statement for strata obligations signed by the tenant, the tenancy agreement, the assignment of the tenancy agreement, notices to the tenant regarding noise complaints and other strata violations, an invoice showing that the landlord has paid the tenant's move-in fee and bylaw fine for excessive noise and documents verifying service of the hearing package and the Notice.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all the evidence and accept that the tenant has been served with the notice to end tenancy as declared by the landlord. The Notice was deemed received by the tenant five days after the first Notice was served via registered mail, in this case the Notice was mailed on May 4, and deemed served on May 9, 2012. I have no evidence before me that the tenant filed an application to dispute the Notice.

Based on the foregoing, I find the tenant is conclusively presumed under section 47(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice and must move out of the rental unit.

Conclusion

I find that the landlord is entitled to an order of possession effective on the move out dated listed on the Notice, or June 30, 2012.

The order of possession is enclosed with the landlord's Decision. This order is a legally binding, final order, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this order of possession by vacating the rental unit.

I also find the landlord has established a monetary claim in the amount of \$325.00 for the bylaw fine of \$200.00 and the move-in fee of \$125.00, for which the tenant agreed to be responsible.

I find that the landlord is entitled to recover the filing fee of \$50.00, and at the landlord's request, I allow them to retain \$375.00 from the tenant's security deposit in satisfaction of the monetary claim and for recovery 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: June 22, 2012.

Residential Tenancy Branch