



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

In response to an application by the landlord a previous hearing in this matter was held on June 13, 2012. The landlord sought an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. While the landlord's agent participated and gave affirmed testimony, the tenant did not appear. Pursuant to a decision issued by date of June 13, 2012, an order of possession and a monetary order were issued in favour of the landlord.

Following the above, the tenant filed an application for review consideration on grounds that he was unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control. By Review Consideration Decision dated June 25, 2012, the tenant's application was granted. In the result, the decision and orders dated June 13, 2012 were suspended pending the completion of a new hearing.

In relation to scheduling of a new hearing, the Review Consideration Decision provided in part as follows:

Details of the new hearing are included with the tenant's copy of this decision. The tenant **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

However, despite this instruction to the tenant the landlord's agents gave affirmed testimony to the effect that the tenant did not provide the landlord with the Notice of Hearing documents. Rather, the landlord sought information concerning the new hearing directly from the Residential Tenancy Branch. In the result, while the landlord was represented at this hearing and gave affirmed testimony, the tenant did not appear.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from December 1, 2011 to May 31, 2012. Thereafter, the tenancy agreement provides that the tenancy may continue for "another fixed length of time." Monthly rent of \$455.00 is due and payable in advance on the first day of each month, and a security deposit of \$207.50 was collected.

On April 24, 2012, the landlord met with the tenant and informed him that the fixed term tenancy would not be renewed or extended beyond the expiry date of May 31, 2012. The landlord's decision in this regard was also communicated to the tenant in writing by letter dated April 24, 2012.

Subsequently, the landlord issued a 1 month notice to end tenancy for cause dated May 7, 2012. The notice was personally served on the tenant on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 30, 2012. Reasons shown on the notice for its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit/site

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

significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The tenant declined to abide by the landlord's instruction to vacate the unit as the fixed term of tenancy would not be renewed or extended beyond May 31, 2012. Further, the tenant did not file an application to dispute the 1 month notice for cause, and he presently continues to reside in the unit. Rent has been paid in full to the end of May 2012, however, no rent has been paid for either June or July 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agents, I find that the tenant was instructed to vacate the unit no later than May 31, 2012 as the fixed term of tenancy would not be renewed or extended.

I also find that the tenant was served with a 1 month notice to end tenancy for cause dated May 7, 2012. The tenant did not file an application to dispute the notice within the 10 day period available for doing same after service of the notice. The tenant is therefore conclusively presumed under section 47(5) of the Act, to have accepted that tenancy ended on the effective date of the notice.

Following from all of the above, I find that the landlord has established entitlement to an order of possession. During the hearing the landlord's agents requested that, in the event of an order of possession being granted, that it be made effective no later than 1:00 p.m., Friday, July 27, 2012.

Section 57 of the Act speaks to **What happens if a tenant does not leave when tenancy ended**, and provides in part as follows:

57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

As for the monetary order, following from section 57 of the Act, as above, I find that the landlord has established a claim of \$960.00, which is comprised as follows:

\$910.00: unpaid rent for the 2 month period of overholding (June @ \$455.00 +
July @ \$455.00);
\$50.00: filing fee

Pursuant to section 82 of the Act which addresses **Review of director's decision or order**, the decision and orders dated June 13, 2012 are hereby set aside.

As to the disposition of the security deposit, the attention of the parties is drawn to section 38 of the Act which speaks to **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective no later than **1:00 p.m., Friday, July 27, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$960.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: July 17, 2012.

Residential Tenancy Branch