



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's application for an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee. The landlord's agent attended the hearing with the landlord and gave affirmed testimony on the landlord's behalf. Despite being served in-person on August 11, 2012 with the application for dispute resolution and notice of hearing (the "hearing package") the tenant did not appear.

As rent is currently paid in full to the end of September 2012, the landlord withdrew the application for a monetary order as compensation for unpaid rent.

Issue(s) to be Decided

Whether, under the Act, Regulation or tenancy agreement, the landlord is entitled to an order of possession and recovery of the filing fee.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on March 4, 2008. Monthly rent of \$650.00 is due and payable in advance on the first day of each month, and a security deposit of \$320.00 was collected. An addendum to the tenancy agreement provides as follows:

- No smoking
- No pets
- Tenancy for 2 people

Pursuant to section 47 of the Act which speaks to **Landlord's notice: cause**, the landlord served the tenant with a 1 month notice to end tenancy for cause dated July 6, 2012. The notice was served in-person on the tenant on that same date. A copy of the notice was submitted in evidence. Reasons shown on the notice for its issuance are as follows:

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 landlord's agent testified that despite repeated requests, and contrary to the requirements set out in the addendum to the tenancy agreement, the tenant has persisted in smoking tobacco and marijuana within the unit and immediately outside the unit. This behaviour has unreasonably disturbed the landlord, and has adversely affected the landlord's physical well-being, in addition to his quiet enjoyment. To date, the tenant has ignored the notice and continues to smoke.

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord through his agent, I find that the tenant was served with a 1 month notice to end tenancy for cause dated July 6, 2012. Thereafter, the tenant has not vacated the unit. Neither has the tenant filed an application to dispute the notice within the 10 day period available for doing same after receiving the notice. Accordingly, I find that the landlord has established entitlement to an order of possession.

As the landlord has succeeded in this application, I find that he has also established entitlement to recovery of the \$50.00 filing fee. Accordingly, I hereby order that the landlord may do so by withholding this amount from the tenant's security deposit.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenant. 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.

I hereby order that the landlord may withhold **\$50.00** from the tenant's security deposit in order to recover 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: September 12, 2012.

Residential Tenancy Branch