



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with an application by the landlord for an order of possession. Both parties participated in the conference call hearing. Both parties gave affirmed testimony.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The tenancy began on or about June 1, 2009. Rent in the amount of \$570.00 is payable in advance on the first day of each month.

The landlord gave the following testimony; the tenant resides in a Native Housing Society run location, this location provides affordable housing and rentals, part of the tenancy agreement with the subject tenant is that her son reside with her or she would no longer qualify to live there, in January 2012 the landlord became aware that the tenant's son was the subject of a "Continuing Care Order" of the Director of the local government authorities and no longer resides with his mother, the landlord contacted the tenant through written and oral correspondence to try to come to an agreement in this matter, the tenant notified the landlord and told her "I'm not moving", on July 19, 2012 the landlord issued a One Month Notice to End Tenancy for Cause on the basis that the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so, the effective date of the Notice was to be August 31, 2012, the tenant did not move out nor did she file to

dispute the Notice, the landlord made several phone calls to the tenant to inform her that she was residing past the effective date of the notice and was told once again "I'm not moving", the landlord is seeking an order of possession.

The tenant gave the following testimony; she is in "the battle of my life trying to get my son back", she was lied to in court and is seeking his return, he still visits on a regular basis, she is a recovering alcoholic and drug user, is trying to do whatever it takes to get him back, didn't realize she had to dispute the notice, thought that by telling the resident manager; she was in fact disputing the notice, wishes to remain a resident of the subject location as she feels it's been very good for her and doesn't want "to go backwards".

Analysis

As explained to the parties at the outset of the hearing the onus or burden of proof is on the party making the claim, in this case the landlord. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Both parties gave testimonial evidence that was considered in making the decision. The landlord submitted documentary evidence that was also considered in this matter.

Although the tenant is making every possible effort to regain the custody of her son and have him live with her again she was unable to advise when and if that would be possible.

In the tenant's own testimony she acknowledges the following; the receipt of the notice, the fact she didn't dispute the notice, the fact her son no longer resides with her, and that the tenancy agreement clearly outlines the qualifications of living in this financially assisted complex. Based on the above, I find the landlord has proven their case and are entitled to an order of possession.

The landlord's oral and written application for an order of possession pursuant to Section 55 of the Act is granted. The tenant must be served with the order of possession. 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. The Notice issued on July 19, 2012 with an effective date of August 31, 2012 remains in full effect and force. The tenancy is terminated.

Conclusion

The landlord is granted an order of possession.

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: October 04, 2012.

Residential Tenancy Branch