



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 Dispute Resolution, in which the landlord has made application for an Order of Possession for Cause, compensation for unpaid rent and to recover the filing fee costs from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing

The tenant provided affirmed testimony that she received Notice of the hearing, sent to her via registered mail on September 8, 2012.

Preliminary Matter

The landlord withdrew the request for a monetary order; September, 2012 rent was paid. October rent is outstanding, but he did not wish to pursue an Order.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed Notice issued ending the tenancy for cause?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced over 2 years ago; there is no written tenancy agreement.

Rent of \$800.00 is due on the first day of each month.

The tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause, which the landlord testified was given to the tenant at 11 a.m. on July 31, 2012.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if she did not apply to dispute the Notice within 10 days she was presumed to have accepted the Notice and that she must move out of the unit by the effective date of the Notice; August 31, 2012.

The reasons stated for the Notice to End Tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and put the landlord's property at significant risk.

The landlord and tenant agreed that on the day the tenant received the Notice she telephoned the landlord. The landlord agreed that he told the tenant not to worry, as she was at work and had told him the Notice had stressed her. The tenant took the landlord's reassurance to mean that he would not proceed with the Notice.

The tenant confirmed receipt of the Notice of hearing, sent to her shortly after the effective date of the Notice. She did not dispute the Notice, as she believed the landlord would not proceed.

The parties agreed that August and September rent was paid at the end of September, at which time a receipt for use and occupancy only was issued to the tenant.

The tenant was aware of the reasons indicated on the back of the Notice to end tenancy but did not understand she must dispute the Notice.

The landlord requested an Order of possession effective November 15, 2012.

Analysis

I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause issued on July 31, 2012, by personal delivery to the tenant on that date.

As rent is due on the first day of each month, the Notice was effective on August 31, 2012.

The tenant failed to vacate the unit and was then served with Notice of this hearing. The tenant did not dispute the 1 Month Notice, either at the time it was given to her, or at the point she was served with Notice of this hearing. The tenant explained she did not understand her responsibilities; however, it appears that the tenant failed to read the Notice, which instructs a tenant to dispute the Notice within 10 days by submitting an application for dispute resolution.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy ended on the effective date of the Notice, August 31, 2012. The landlord has accepted rent, but issued a receipt for use and occupancy only; indicating he was proceeding with a request for an Order of possession.

I find that the intention of the landlord was clear; that when he served the tenant with Notice of the hearing, he clearly informed the tenant that he wished to have the tenancy end. The landlord's intention was also confirmed by the rent receipt issued for use and occupancy only.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession that is effective November 15, 2012, at 1 p.m.

As the landlord's application has merit I find that he is entitled to the \$50.00 filing fee.

Conclusion

The landlord has been granted an Order of possession that is effective **November 15, 2012, at 1 p.m.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order for \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 05, 2012.

Residential Tenancy Branch