



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This matter dealt with an application by the Landlord for an Order of Possession. At the beginning of the hearing, the Tenant confirmed that he was served with a copy of the Landlord's application for Dispute Resolution.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

The Landlord said the tenancy started on August 15, 2012 when the Tenant was given possession of the rental unit however the Tenant said he did not move into the rental unit until August 19, 2012. The Parties agree that rent is \$800.00 per month payable in advance on the 1st day of each month.

The Landlord said the Tenant was supposed to have the exclusive use of two bedrooms and a bathroom in the basement and was to have the shared use of the family room in the basement where the electrical breaker is located. The Tenant claims that he was supposed to have the exclusive use of the entire basement suite and that the Landlord and her mother continued to enter his suite without notice during the tenancy.

The Parties agree that on August 15, 2012, the Tenant paid \$800.00 representing a security deposit of \$400.00 and rent for the period, August 15 – 31, 2012. The Parties also agree that the Tenant has not paid rent for September, October or November 2012. The Landlord said she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 13, 2012 by posting it to the rental unit door. The Tenant admitted that he received this Notice on September 15, 2012.

The Tenant initially claimed that he withheld rent for September and October because he discovered that the Landlord was not the owner of the property and therefore he did not believe she was entitled to rent the suite. The Tenant then claimed that he withheld

rent because the rental unit was not clean at the beginning of the tenancy and had a flea infestation (among other things).

Analysis

Section 46(4) of the Act states that within 5 days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent stated on the Notice or (if they believe the amount is not owed) apply for dispute resolution to cancel the Notice. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 13, 2012 when it was posted to the rental unit door. The Tenant admitted that he received this Notice on September 15, 2012. Consequently, the Tenant would have had to pay the amount of rent arrears alleged on the Notice or apply to dispute that amount no later than September 20, 2012.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: November 01, 2012.

Residential Tenancy Branch