



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to alleged cause and to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on October 10, 2012. The landlord supplied evidence of the tracking number and receipt of the registered mail and said that a search of the records showed that the tenant signed for the envelope.

I find the tenant was served in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to alleged cause and to recover the filing fee?

Background and Evidence

The landlord presented evidence that this tenancy began on December 1, 2011, monthly rent is \$1225.00, and a security deposit of \$612.50 was paid by the tenant at the beginning of the tenancy.

The landlord submitted evidence that the tenant was served a 1 Month Notice to End Tenancy for Cause (the "Notice"), dated August 30, 2012, by to the tenant by posting the Notice on the tenant's door on that date, listing an effective end of tenancy of September 2, 2012. Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on September 2, 2012.

A notice to end the tenancy is not effective earlier than one month after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving notice to end the tenancy. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to October 31, 2012.

The Notice explained that the tenant had ten days to dispute the Notice. It also explains that if the tenant did not file an application to dispute the Notice within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The causes as stated on the Notice alleged that the tenant has caused extraordinary damage to the rental unit, has not done required repairs of damage to the rental unit and that the tenant has not paid the pet damage deposit within 30 days as required by the tenancy agreement.

The landlord's relevant evidence included copies of notices from the strata, copies of photographs of the rental unit, an incident report and the Notice.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

The tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective vacancy date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: November 08, 2012.

Residential Tenancy Branch