



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND and FF

Introduction

This application was made by the landlord on December 18, 2012 seeking an Order of Possession pursuant to a one-month Notice to End Tenancy for cause dated and served in person on November 27, 2012 and setting an end of tenancy date of December 31, 2012. The landlord also sought a monetary award for damage to the rental unit and to recover the filing fee for this proceeding from the tenant.

Despite having been served with the Notice of Hearing served in person on December 19, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

According to the landlord, the Notice to End Tenancy and Notice of Hearing were both served to the tenant in the presence of a police officer.

As a preliminary matter, as requested by the landlord, I have permitted her to amend her application to request a monetary award for overholding, as despite promises to vacate three times in honor of the Notice to End Tenancy, the tenant remains in possession of the rental unit and has paid no rent for January 2013.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession and a monetary award as requested and to recovery the filing fee for this proceeding?

Background and Evidence

This tenancy began on May 1, 2010. Rent is \$650 per month and the landlord holds a security deposit of \$325 paid at the beginning of the tenancy.

During the hearing, the landlord stated that the Notice to End Tenancy had been issued under section 47 of the Act. Reasons cited included:

- Significant interference or unreasonable disturbance of another occupant or the landlord;
- Serious jeopardy of the health or safety or lawful right of the landlord or another occupant'
- Putting the landlord's property at significant risk;
- Engaged in illegal activity damaging the landlord's property and adversely affecting other occupants for the landlord;
- Caused extraordinary damage to the property, and;
- Failed to do required repairs and assigned/sublet without consent..

The landlord submitted into evidence a letter from the municipal bylaw enforcement office verifying that they had received a complaint of accumulated rubbish and other debris on the property on November 15, 2012 . The letter stated that the landlord was advised of the violation on November 19, 2012 and had the offending material removed that day.

The landlord also submitted a letter of complaint from a business neighbouring the rental unit advising that the tenant had been involved in a number of very loud arguments on the street with a female co-habitant sometimes late at night, loud parties, letting their large dog relieve itself on neighbouring lawn without cleaning up, and in one instance, pulling a neighbour's bandana over his face when he approached them.

The landlord also claimed damage to the rental unit, including to the front door which the tenant declined to repair as he stated the police had kicked it in.

Analysis

As stated on the Notice to End Tenancy, Section 47(4) of the *Act* provides a tenant who has received such notice 10 days within which the tenant may make application to contest the notice.

Section 47(5) of the *Act*, states that if a tenant does not make application to contest the notice on time, then the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate by that date. In the present matter, I find that the tenant has not made application to contest the notice and, therefore, the tenancy ended on December 31, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

In addition, I find that the tenant has been overholding since December 31, 2012. As authorized under section 72 of the *Act*, I hereby authorize the landlord to retain the tenant's security deposit in recovery of the filing fee for this proceeding and in partial satisfaction for the per diem rent due for the tenant's overholding.

However, as the landlord has submitted no evidence in support of the claim for damage to the rental unit, I dismiss this part of the application with leave to reapply.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession enforceable through the Supreme Court of British Columbia to take effect two days from service of it on the tenant.

The landlord is authorized to retain the tenant's security deposit to recover the filing fee for this proceeding and the per diem amount for the tenant's overholding.

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: January 14, 2013

Residential Tenancy Branch

