



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC and FF

Introduction

This hearing was convened on the landlord's application of January 9, 2013 for an Order of Possession pursuant to a Notice to End Tenancy for cause served in person on October 13, 2012. The landlord also sought a monetary award for loss or damage under the legislation or rental agreement and recovery of the filing fee for this proceeding from the tenant.

Issue(s) to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy, the monetary award requested, and recovery of the filing fee for this proceeding.

Background and Evidence

This tenancy, in a basement suite in the landlord's home, began on September 1, 2012. Rent is \$800 per month and the landlord held a security deposit of \$400, although that has now been reduced to \$350.

During the hearing, the landlord submitted a chronology of events including six domestic disputes the tenant and her boyfriend before she served the Notice to End Tenancy for cause on October 13, 2012. The boyfriend appeared to have moved in. A similar number of disturbances followed service of the notice and police attended on at least two occasions and an ambulance on one.

After service of the notice, the tenant had promised to move out on November 15, 2012 and asked the landlord to apply her security deposit to November rent. The tenant did not move as promised, and returned only \$350 of the deposit.

The tenant stated she now has a restraining order against her boyfriend and he will not be back, but the landlord stated that the disturbances have continued and that she had seen the boyfriend in the rental unit as recently as mid-January.

The landlord said her request for a monetary award was for return of the balance of the security deposit.

Analysis

Section 47(5) and (6) of the *Act* provides that a tenant may make an application to dispute a Notice to End Tenancy for cause within 10 days of receipt of the notice; otherwise, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the rental unit by that date.

I find that the tenant has not made application to contest the Notice to End Tenancy of October 13, 2012 she is, therefore, conclusively presumed to have accepted that the tenancy ended on the effective date which was November 30, 2012.

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

As the tenancy is ending, I find no gain to ordering the tenant restore the security deposit to the original \$400 from the currently held \$350.

However, as the application has succeeded, I find that the landlord is entitled to recover the filing fee for this proceeding from the tenant and as permitted under section 72 of the *Act*, I hereby order that she may do so by retaining \$50 from the remainder of the tenant's security deposit.

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 recover the filing fee for this proceeding by retaining \$50 from the tenant's security deposit.

I note that it was necessary to mute the tenant's line three times during the hearing when she would not accept my requests to refrain from interrupting the landlord's testimony.

I would note, also, that the landlord offered to accept an end date of February 28, 2012 if the tenant would pay the February rent and promise to vacate at the end of the month. However, the tenant stated that she preferred to cause the landlord to pay bailiff fees.

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: February 01, 2013

Residential Tenancy Branch

