



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it in the Tenant's mail box. The Landlord said he phoned the Tenant the following day to confirm the Tenant received the application and hearing package. The Landlord said the Tenant said he received the application hearing package. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the absence of the Tenant.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on October 1, 2011 as a month to month tenancy. Rent is \$700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$350.00 on October 1, 2011.

The Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated February 15, 2013 on February 15, 2013 with an effective vacancy date of March 31, 2013. The Landlord continued to say he issued the Notice because the Tenant is smoking on the property and has disturbed the Landlord with loud shouting and other noise. The Landlord said the tenancy agreement states no smoking on the property and the Landlord said he has issued 2 written warning letters to the Tenant about smoking and the loud noises from his rental unit. The Landlord said he has provided copies of the the warning letters to the Tenant and photographs of the area the Tenant has been smoking on the property. The Landlord said the photos show ashes and cigarette butts on his property. The Landlord said the Tenant does not deny smoking on the property or making loud noises in his rental unit. The Landlord said the Tenant

has agreed to move out, but the Landlord would like an Order of Possession if the Tenant does not move out when he says is going to.

Analysis

Section 47(h) says a landlord may end a tenancy by giving a notice to end tenancy if the Tenant breaches a material term of the tenancy agreement and does not correct the breach in a reasonable amount of time.

I accept the Landlord's testimony and evidence that the Tenant has smoked on the property and that smoking on the property is a material breach of the tenancy agreement. Further I accept the Landlord's testimony and evidence that the Tenant has not corrected the situation. Consequently I find the Landlord has established grounds for an Order of Possession based on cause, which is a breach of a material term of the tenancy agreement due to smoking on the property.

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy three days after it was posted to the Tenant's mail box, or on February 18, 2013. Consequently, the Tenant would have had to apply to dispute the Notice by February 28, 2013.

I find that the Tenant 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 March 31, 2013 at 1:00 p.m.

Conclusion

An Order of Possession effective 1:00 p.m. on March 31, 2013 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Order of Possession 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: March 27, 2013

Residential Tenancy Branch

