



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Cause and to recover the filing fee costs.

The landlord provided affirmed testimony that on June 5, 2013 at approximately 7 a.m. she posted the Notice of hearing documents to the tenant's door. The landlord's sister was present as a witness. By June 11, 2013 the hearing documents had been removed from the door; the landlord lives in a separate unit on the property.

Therefore, pursuant to section 89 and 90 of the Act I find that the tenant is deemed served with Notice of the hearing effective June 8, 2013.

Preliminary Matters

The landlord said she first submitted a copy of the 1 Month Notice to End Tenancy for Cause to the Residential Tenancy Branch (RTB), via facsimile, on the morning of this hearing. As that notice was not before me a 2nd copy of the Notice was requested; it was immediately submitted and aligned with the affirmed testimony provided by the landlord during the hearing.

An evidence package that was submitted to the RTB by the landlord on June 25, 2013 was not served to the tenant; therefore, that evidence was set aside. The landlord was at liberty to provide oral submissions in relation to that evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed Notice issued ending the tenancy for cause?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2013, rent is due on the 1st day of the month. A tenancy agreement was not signed.

The landlord testified that on May 8, 2013 a 1 Month Notice to End Tenancy for Cause was posted to the tenant's door at 5:30 or 6 p.m., with another tenant and the landlord's sister present as a witness. The Notice had an effective date of June 8, 2013.

The Notice indicated that the tenant must apply to cancel the Notice within 10 days of receipt and that if he did not apply to dispute the Notice within 10 days he was presumed to have accepted the Notice and that he must move out of the unit by the effective date of the Notice; June 8, 2013.

The reasons stated for the Notice to End Tenancy were that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful interest of another occupant or the landlord and put the landlord's property at significant risk.

The landlord recently received a letter from the tenant, dated June 10, 2013. The tenant said that he had been in custody for approximately 10 days and that the landlord was required, by law, to store his personal property for 3 months. The tenant did not indicate he would return to the rental unit; only that the landlord could not dispose of his property.

On June 25, 2013 the tenant's mother came to the rental unit and took several bags of the tenant's belongings. The tenant's mother declined to assist any further in the removal of the tenant's personal property.

Analysis

I find that the tenant was served with a 1 Month Notice to End Tenancy for Cause issued on April 8, 2013 and that the Notice is deemed served on the 3rd day after posting; May 10, 2013.

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 June 30, 2013.

There was no evidence before me that the tenant dispute the Notice. Therefore, I find that the tenant received a Notice to end tenancy that requires him to vacate the rental unit on June 30, 2013. Further, as the tenant wrote the landlord a letter indicating she must store his personal property I find that the tenant was acknowledging that the tenancy had ended.

Section 47(5) of the Act provides:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.*

As the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy will end on the Notice effective date; June 30, 2013.

Therefore, based on section 47(5) of the Act and section 55(2)(b) of the Act, I find that the landlord is entitled to an Order of possession that is effective June 30, 2013 at 1 p.m.

As the landlord's application has merit I find that the landlord is entitled to the \$50.00 filing fee.

The landlord has been granted an Order of possession that is effective **at 1 p.m. on June 30, 2013**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Based on these determinations I grant the landlord a monetary Order in the sum of \$50.00. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 28, 2013

Residential Tenancy Branch

