



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPC

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking to end the tenancy and obtain an order of possession for the rental unit under a one month Notice to End Tenancy for cause, and to keep all or part of the security deposit for alleged damage to the rental unit.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent for the Landlord testified that she had served the Tenant with the Application and Notice of Hearing in person on July 19, 2013. Despite this the Tenant did not appear at the hearing. Based on affirmed testimony I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to end the tenancy and obtain an order of possession?

Is the Landlord entitled to retain a portion of the security deposit?

Background and Evidence

The Agent for the Landlord testified that on June 27, 2013, she personally served the Tenant with a one month Notice to End Tenancy for cause. In evidence the Agent provided a letter from another Agent for the Landlord who writes that he personally

witnessed the Tenant being served by the Agent on June 27, 2013. The effective date of this Notice is set out as July 27, 2013; however, under the Act this automatically corrects to the end of the month or July 31, 2013 in this instance.

The one month Notice to End Tenancy lists several causes to end the tenancy including, significant interference with or unreasonable disturbances to other occupants in the residential building, seriously jeopardizing the health, safety or lawful rights of other occupants at the building, and alleges that the Tenant has engaged in an illegal activity that adversely affected the quiet enjoyment or physical well being of another occupant.

The Notice to End Tenancy sets out in writing that the Tenant had 10 days to dispute the Notice, by filing an Application for Dispute Resolution. It also sets out that if the Tenant does not file such an Application within 10 days of the date of service, the Tenant is presumed to have accepted the end of the tenancy and must vacate the rental unit on the effective date of the Notice.

The Agent for the Landlord testified the Tenant had not moved out and that the Landlord had not been served with any Application to dispute the Notice by the Tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant has failed to apply to dispute the Notice within the required time frame.

Therefore, under section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective day of the Notice, July 31, 2013, and should have vacated on that date. This leads me to find the Landlord is entitled to an order of possession effective two days after service on the Tenant. This order may be enforced in the Supreme Court of British Columbia.

I dismiss, with leave to reapply, the portion of the Landlord's Application that claims against the security deposit, as this was made prematurely. The Tenant has until the end of the tenancy to make repairs, or the Tenant may agree in writing that the Landlord may keep the security deposit for repairs or towards any rent due.

Conclusion

The Tenant failed to dispute the Notice to End Tenancy and is therefore conclusively presumed under the law to have accepted the end of the tenancy. The Tenant was required under the Notice to vacate on July 31, 2013; however, the Tenant has failed to do so.

Therefore, the Landlord is granted an order of possession effective two days after service upon the Tenant. This order may be enforced in the Supreme Court of British Columbia.

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 Act.

Dated: August 22, 2013

Residential Tenancy Branch

