



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPE; OPR; OPC; MNR; MNSD; FF

Introduction

This is the Landlords' application for an Order of Possession; a Monetary Order for unpaid rent; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord DN gave affirmed testimony at the Hearing.

DN testified that he served the Tenant with the Notice of Hearing documents by handing the documents to the Tenant at the rental unit on June 27, 2014. DN stated that the Tenant ripped up the documents and closed the door in DN's face.

Based on the DN's affirmed testimony, I am satisfied that the Tenant was duly served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Preliminary Matters

The Landlords provided a copy of the Notice to End Tenancy for Cause in evidence. DN testified that the Landlords did not issue a Notice to End Tenancy for Unpaid Rent and that although the Tenant is in arrears, the Landlords intend to enforce the Notice to End Tenancy for Cause. It is clear from the Landlords' application that the Landlords are seeking an Order of Possession because the Tenant is "threatening and being abusive to other tenants". Therefore, pursuant to the provisions of Section 64(3) of the Act, I amended the Landlords' application to reflect an application for an Order of Possession for Cause. The Landlords' application for an Order of Possession for unpaid rent, and because the Tenant's employment has ended, were dismissed.

Issues to be Decided

- Are the Landlords entitled to an Order of Possession?
- Are the Landlords entitled to a monetary award, and if so, in what amount?

Background and Evidence

DN gave the following testimony:

Monthly rent is \$850.00, due the first day of each month. The Tenant paid a security deposit in the amount of \$425.00 on October 29, 2013.

On April 15, 2014, DN served the Tenant with a One Month Notice to End Tenancy for Cause by handing the Notice to a male adult who resided with the Tenant at the rental unit. DN stated that a witness was present.

DN testified that the Tenant was originally hired as the resident manager, but was fired because:

- He was “hitting on female residents” and had attacked one of them;
- He used his keys to enter female residents’ apartments without their knowledge or consent;
- He kept rent paid in cash but told the Landlord that someone stole it;
- He issued receipts to residents, signing DN’s name, without permission;
- He wanders around the rental property with a baseball bat, threatening male residents. He used it against one of the male residents.
- He has broken doors and windows.
- He has told several residents that they don’t have to pay rent anymore and that it will take months for them to be evicted. In the meantime, he says they can live rent free.

DN testified that the other residents are afraid of the Tenant and do not want to incur his anger, so they will not testify against him. DN stated that he has called the police, but they will not do anything because the victims will not give statements to the police.

DN stated that he was withdrawing his application for a monetary award for unpaid rent because he does not believe the Landlords will be able to collect any money from the Tenant without taking him to Court, and it is not worth it.

Analysis

I accept that the Landlord served the Tenant with the Notice to End Tenancy by leaving a copy with an adult who apparently resides at the rental unit. The Tenant did not file an application to dispute the Notice to End Tenancy and therefore, pursuant to Section 47(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on May 31, 2014. I find that the Landlord is entitled to an Order of Possession.

I explained to the Landlord DN that the Landlords' application to retain the security deposit is premature and that portion of the application is dismissed with leave to reapply.

The Landlords' application had merit and I find that they entitled to recover the cost of the \$50.00 filing fee from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct the cost of the filing fee from the security deposit.

Conclusion

I hereby grant the Landlords an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords may deduct the **\$50.00** filing fee from the security deposit. The remaining security deposit, in the amount of \$375.00 must be applied in accordance with the provisions of the Act.

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: August 22, 2014

Residential Tenancy Branch

