



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1325 in order to enable the tenant to connect with this teleconference hearing scheduled for 1300. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the dispute resolution package, which included all documentary evidence before me, on 5 November 2014. On the basis of this evidence, I am satisfied that the tenant was served with notice of this application pursuant to section 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord submitted the following evidentiary material:

- a copy of a residential tenancy agreement which was signed by the landlord and the tenant on 16 June 2014, indicating monthly rent of \$595.00 due on the first for a tenancy commencing on 1 June 2014;
- a copy of the 1 Month Notice delivered on 24 October 2014, with a stated effective date of 24 November 2014; and
- a proof of service of the 1 Month Notice (witnessed by the building maintenance employee) that indicates that at 1614 on 24 October 2014, the landlord personally served the tenant with the 1 Month notice.

The 1 Month Notice cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health safety or lawful right of another occupant or the landlord.*

The landlord provided sworn testimony that:

- the tenant continues to occupy the rental unit;
- the landlord continues to hold the tenant's security deposit in the amount of \$297.50;
- the tenant uses the window of the rental unit as an entry and exit, leaving the residential building exposed to property crime;
- the tenant had an altercation with his sister (who is also another resident of the building) that involved a threat of violence with a knife;
- the rental unit is filthy and the smell from the rental unit emanates into the hallway and disturbs the other residents;
- the tenant smokes in the rental unit contrary to the building rules; and
- the police have been called to the rental unit as a result of the tenant's behaviour.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(i) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant or person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord has provided uncontested and sworn testimony that the conduct of the tenant or persons the tenant has permitted on the residential property have significantly interfered with or unreasonably disturbed another occupant or landlord. Furthermore, the 1 Month Notice states that the tenant had ten days, from the date of service of that notice, to apply for dispute resolution or the tenant would be presumed to have accepted that the tenancy would end on the effective date of the 1 Month Notice. The tenant did not apply to dispute the 1 Month Notice within ten days from the date of service. For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reason for cause set out by the landlord in the 1 Month Notice.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice to take effect would be 30 November 2014. The landlord has set an effective date in the 1 Month Notice of 24 November 2014. This effective date is too early. Section 53 operates in this case to change the effective date to 30 November 2014. As the tenancy has ended 30 November 2014, the landlord is entitled to an order of possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

The evidence provided by the landlord indicates that he continues to hold the tenant's \$297.50 security deposit paid in June 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain a portion of the security deposit in full satisfaction of the \$50.00 filing fee.

Conclusion

The landlord is provided with a formal copy of an order of possession effective two days from its service on the tenant. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$297.50 to \$247.50.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 05, 2014

Residential Tenancy Branch

