



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the “hearing package”) by personal delivery December 4, 2014. 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 with both the Landlord and the Tenant in attendance.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on October 4, 2010 as a month to month tenancy. Rent is stated in the tenancy agreement at \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 on October 4, 2010.

The Landlord said he issued a 1 Month Notice to End Tenancy for Cause dated October 28, 2014 on October 28, 2014 by personal delivery with a witness. The effective vacancy date on the Notice to End Tenancy is November 30, 2014. The Landlord said he issued the Notice to End Tenancy for Cause as the Tenant has a cat and this is a material breach of the tenancy agreement. The Pet Clause on page 4 of the tenancy agreement states “no pets are allowed in or around the rental unit”. The Landlord said the Tenant has breached the tenancy agreement and as a result the Landlord requested an Order of Possession for January 31, 2015.

The Tenant said she read both pages of the 1 Month Notice to End Tenancy for Cause and she understood the information in the Notice. The Tenant continued to say that she

did not make an application to dispute the Notice as she has health issues that interfered with her making an application to dispute the Notice to End Tenancy. The Arbitrator asked the Tenant if she was hospitalized and the Tenant said that she was not. As well the Arbitrator asked if the Tenant had family living with her who could have helped her make an application. The Tenant said she has an 18 year old daughter living with and a 23 year daughter who does not live with her. The Tenant said she did not make an application to dispute the Landlord's 1 Month Notice to End Tenancy for Cause dated October 28, 2014.

The Landlord said that the Act says the Landlord can request an Order of Possession if a tenant does not dispute a Notice to End Tenancy. The Landlord requested an Order of Possession effective for January 31, 2014. As well the Landlord said if the Tenant removes the cat and the Tenant shows the cat will not return then the Landlord will consider continuing the tenancy. The Landlord said the problem is the cat.

The Tenant requested additional time to move out and did not volunteer to remove the cat from the rental unit.

The Landlord declined the Tenant's request for more time to move out.

Analysis

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 on the day it was served in person or on October 28, 2014. Consequently, the Tenant would have had to apply to dispute the Notice by November 7, 2014.

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.

As well the Tenant agrees she has not made an application to dispute the 1 Month Notice to End the Tenancy for Cause; the Tenant is conclusively presumed to have accepted that the tenancy has ended on November 30, 2014 the effective vacancy date. Consequently I find that the Landlord has established grounds to receive an Order of Possession for January 31, 2015 at 1:00 p.m.

I also find that as the Landlord was successful in this matter he is entitled to recover the filing fee of \$50.00 for this proceeding from the Tenant. I order the Landlord to retain \$50.00 from the Tenant's security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective January 31, 2015 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: January 06, 2015

Residential Tenancy Branch

