



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 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 11:25 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was served to the tenant by posting it on her rental unit door on November 3, 2014. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served with the 1 Month Notice on November 6, 2014, 3 days after its posting. The landlord gave sworn testimony that he sent his Application for Dispute Resolution hearing package to the tenant by registered mail on December 10, 2014. In accordance with sections 89 and 90 of the *Act*, I accept that the tenant was deemed served with the Application for Dispute Resolution hearing package on December 15, 2014, 5 days after its mailing.

Issues 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

The landlord gave evidence that the original lease for the premises began on August 1, 2014. The rental amount for this unit was established at \$647.00 to be paid on the first

of each month. The landlord testified that he continued to hold the \$323.50 security deposit that the original tenant paid on August 1, 2014.

The landlord has applied for an Order of Possession for cause. The landlord provided a copy of the written tenancy agreement for this tenancy, attaching an addendum. That addendum indicates that, "smoking IS NOT allowed inside the unit". The landlord provided undisputed testimony and documentary evidence that he has received several calls and emails with respect to a "pot smell" coming from the tenant's rental unit. The landlord provided a "breach of lease agreement notice" to the tenant on October 29, 2014 advising the tenant of the complaints and that further breaches will result in an "eviction process". The notice specifically references "smoking pot inside the unit".

The landlord relied on several grounds to end the tenancy for cause including that the tenant (or a person permitted on the property by the tenant);

- has significantly interfered with another occupant or landlord;
- seriously jeopardized the health or safety or the lawful right of another occupant or landlord;
- put the landlord's property at significant risk;
- the tenant engaged in illegal activity that has or is likely to damage the landlord's property;

or that the tenant;

- engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment ... of another occupant or the landlord;
- engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's sworn, undisputed testimony is that there have also been complaints with respect to noise and fighting from the tenant's rental unit. He testified that he and his caretakers receive complaints two to three times per week with respect to the tenant's behaviour. The landlord testified that he has called the police on several occasions and directed the caretakers to do the same when receiving complaints.

The landlord issued the 1 Month Notice on November 3, 2014 with an effective date of December 4, 2014. The corrected effective date for this notice is December 31, 2014. After providing an opportunity for the tenant to respond to this Notice, the landlord applied for an Order of Possession.

Analysis

I find the landlord has shown, on a balance of probabilities, that an end to the tenancy is justified in that the tenant or a person permitted on the property by the tenant has significantly interfered with another occupant or landlord. I accept the landlord's undisputed testimony that the tenant or a person permitted on the property by the tenant has behaved in such a manner that has led to a variety of complaints by other occupants to the landlord and the caretakers at the residence. I accept the landlord's testimony supported by the documentary evidence that he has provided warnings both verbally and in writing with respect to the disturbance of other occupants. I accept the landlord's testimony that the occupant has not responded or corrected her or her guests' behaviour within the residential premises.

Since I have made this finding that the tenant has significantly interfered and unreasonable disturbed other occupants, I do not need to consider the other grounds submitted by the landlord to justify cause to end this tenancy.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and to obtain an end to this tenancy for cause. The tenant has not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 31, 2014. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary award to the landlord to recover the \$50.00 filing fee. To implement this monetary award, I order the landlord to retain \$50.00 from the the tenant's security deposit, which is hereby reduced from \$323.50 to \$273.50.

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 30, 2015

Residential Tenancy Branch

