



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CYCLONE HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

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

- other remedies, identified as an Order of Possession for breach of an agreement, pursuant to section 55.

The tenant did not attend this hearing although it lasted approximately 14 minutes. The landlord's agent ("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 confirmed that she appears on behalf of VES, a company representing the landlord company, CHL, named in this application. The landlord confirmed that she had authority to appear as an agent on behalf of the landlord company, CHL, at this hearing.

The landlord testified that she served the tenant with the landlord's amended Application for Dispute Resolution hearing package ("Application") on February 16, 2015, by way of registered mail. The landlord provided a Canada Post tracking number orally during the hearing. The landlord testified that she checked the tracking number on the day of this hearing and the Canada Post website indicated that as of February 24, 2015, a final notice was being issued before the package would be returned to its sender. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on February 21, 2015, five days after its registered mailing.

Issue to be Decided

Is the landlord entitled to an order of possession for breach of an agreement?

Background and Evidence

The landlord testified that this tenancy began on March 1, 2014 for a fixed term to end on February 28, 2015. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenant on February 12, 2014 and the landlord continues to retain this deposit.

The landlord stated that both parties signed a mutual agreement to end a tenancy, dated December 22, 2014. The landlord provided a copy of this mutual agreement with her Application. The mutual agreement states that the tenant is required to vacate the rental unit by 12:00 p.m. on January 31, 2015. The landlord stated that there were numerous problems during this tenancy, whereby both parties agreed to mutually end the tenancy earlier than the fixed term date of February 28, 2015, as indicated on the tenancy agreement. The landlord stated that as of February 19, 2015, the tenant was still residing in the rental unit. The landlord stated that a telephone call was placed to the tenant on February 23, 2015 and no answer was received. The landlord indicated that she had not physically inspected the rental unit recently to determine if the tenant was still residing there. The landlord requested an order of possession based on the breach of this mutual agreement.

The landlord testified that she was unaware as to whether there is any outstanding rent owed for this tenancy, including for January, February or March 2015. The landlord stated that she assumed rent was paid by the tenant because she was not aware of any 10 Day Notices issued by the landlord to the tenant for unpaid rent.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not appear or provide any written evidence responding to the landlord's Application. The tenant signed a mutual agreement to end this tenancy on January 31, 2015 and did not vacate the rental unit on this date. The tenant did not make an application to dispute the landlord's Application. In accordance with section 55(2)(d) of the *Act*, the landlord and tenant have agreed in writing that the tenancy has ended and the landlord requested an order of possession based on this mutual agreement. This required the tenant and anyone on the premises to vacate the premises by January 31, 2015. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective at 1:00 p.m. on March 31, 2015. Given the testimony from the landlord that the tenant must have paid rent for March 2015, as there were no 10 Day Notices issued, I find that the tenant is entitled to use and occupation of the rental unit until the end of March 2015.

Conclusion

I grant an Order of Possession to the landlord effective at **1:00 p.m. on March 31, 2015**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of 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: March 04, 2015

Residential Tenancy Branch

