



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC OPB FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on March 18, 2015, to obtain Orders of Possession for cause and for breach of an agreement and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony and documentary evidence that the Tenant was served notice of this application and this hearing by registered mail on March 20, 2015. Based on the submissions of the Landlord I find the Tenant was deemed served notice of this proceeding on March 25, 2015, in accordance with section 90 of the Act; and I proceeded in the Tenant's absence.

Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a month to month tenancy agreement that began on April 1, 2014. Rent of \$700.00 was due on or before the first of each month and on April 1, 2014 the Tenant paid \$350.00 as the security deposit.

The Landlord testified that the Tenant was given two verbal warnings and written warnings on October 1, 2014 and October 15, 2014, about the need to remove the garbage that has been left in the yard as well as the disturbances being caused to the neighbors. He stated that the upstairs tenants have been complaining about the domestic disputes that have been going on between the Tenant and his girlfriend or wife and the constant police presence. Copies of the warning letters and a complaint letter from a neighbor were submitted in the Landlord's evidence.

The Landlord also submitted pictures into evidence which he stated were taken on February 20, 2015 to show the condition of the yard. The Landlord argued that he took more pictures four days prior to this hearing and there was even more garbage piled up in the yard.

The Landlord testified that when the Tenant failed to comply with their requests to clean up the property a 1 Month Notice was personally served to the Tenant on February 20, 2015, in the presence of a neighbor.

A copy of the 1 Month Notice was submitted into evidence which indicates that it was issued pursuant to Section 47(1) of the Act listing an effective date of March 31, 2015 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- 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 or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Damage the landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
 - Jeopardize a lawful right or interest of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord provided evidence that the payment for April 2015 was accepted for "use and occupancy" and not rent. He stated that on April 24, 2015 he received the Income Assistance payment for the Tenants May 2015 rent which was returned to the Tenant that same day. The Landlord requested an order of possession be granted.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

Upon review of the 1 Month Notice to End Tenancy issued February 20, 2015, I find the Notice was served upon the Tenant in a manner that complies with the Act. The effective date of the Notice was **March 31, 2015**. I further accept that the Landlord has cause to end this tenancy.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than March 2, 2015. At the time the Landlord filed their application for an Order of Possession on March 18, 2015, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

The Landlord has accepted payment for use and occupancy for the entire month of April 2015. Accordingly, I grant the Landlord's application for an Order of Possession effective April 30, 2015.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord has been granted an Order of Possession effective **April 30, 2015, upon Service** to the Tenant. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Supreme Court and enforced as an Order of that Court.

The Landlord may withhold the one time award of **\$50.00** from the Tenant's security deposit, as full satisfaction of the recovery of the filing fee.

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: April 27, 2015

Residential Tenancy Branch

