



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF
 CNC MNDC RP RPP LRE RR O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on April 13, 2015, seeking an Order of Possession for cause and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on April 08, 2015, seeking an Order to cancel the 1 Month Notice to end tenancy for cause; to obtain a Monetary Order; to Order the Landlord to make repairs to the unit, site, or property; return the Tenant's personal possessions; suspend or set conditions on the Landlord's right to enter the rental unit; allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided; and other reasons.

Service of the Landlord's application and hearing documents was done in accordance with section 89 of the *Act* as they were served by xpresspost. The Canada Post website indicates that the xpresspost went out for delivery on April 14, 2015, and was placed inside the Tenant's locked mailbox on April 15, 2015. As the Landlord's application was to obtain an Order of Possession, the application met the requirements of section 89(2)(d) of the *Act*.

The Landlord confirmed receipt of the Tenant's application and notice of hearing documents. However, no one appeared at the teleconference hearing on behalf of the Tenant; despite the Tenant being served with notice of the Landlord's application in accordance with the *Act* and despite having her own application for dispute resolution scheduled for the same hearing date and time. Accordingly, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed?
2. Did the Landlord appear at the hearing and make an oral request for an Order of Possession?

Background and Evidence

The Landlord submitted evidence that he purchased the rental property as of August 15, 2014. The Tenant had been occupying the rental unit based on a written tenancy agreement she had entered into with a previous owner that began on August 1, 2012. Rent of \$550.00 was payable on the first of each month and on or around August 1, 2012 the Tenant paid \$225.00 as the security deposit.

The Landlord testified that a few days prior to this hearing on May 21, 2015, he had a conversation with the Tenant's ex-husband who had been assisting the Tenant in moving out of the rental unit. He stated that he was told they would be finished moving out as of May 21, 2015 and that he had not checked on the unit, prior to this hearing, to confirm they were moving. The Landlord wished to proceed with his request for an Order of Possession.

There was no evidence submitted in support of the Tenant's application, as no one was in attendance on behalf of the Tenant.

Analysis

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for twenty minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Section 55 of the Act provides that an Order of Possession **must** be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Accordingly I award the Landlord an Order of Possession.

As I have already awarded the Landlord an Order of Possession in response to the Tenant's claim, there is no need to determine the merits of the 1 Month Notice to end tenancy for cause issued March 27, 2015.

The Landlord's request for an Order of Possession was successful; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord has been granted an Order of Possession effective **Two (2) Days after service 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 retain **\$50.00** from the Tenant's security deposit as the one-time award granted for 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: May 21, 2015

Residential Tenancy Branch

