



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DORSET REALTY GROUP
and [tenant name suppressed to protect privacy]

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 for Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend. The landlord was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 1 Month Notice to End Tenancy for Cause was personally served to the tenant on March 10, 2015. A proof of service form was signed by both the tenant on receipt of the notice as well as a witness. The landlord gave sworn testimony that she served the tenant with the Application for Dispute Resolution hearing package by registered mail on April 15, 2015. She further testified that the package was returned as unclaimed, despite the fact that it was sent to the tenant's rental unit home. The landlord provided sworn testimony that the tenant continues to reside in the rental unit. As further assurance that the tenant had an opportunity to attend this hearing, the landlord took the returned package and personally served the landlord's adult son who also lives in the residential premises' rental unit with his father (the tenant).

Residential Tenancy Policy Guideline No. 12 provides that,

[w]here a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 89 and 90 of the *Act*, I find the tenant was deemed served with the Application for Dispute Resolution hearing package on April 20, 2015, 5 days after its mailing.

Issue(s) 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

This tenancy began on October 1, 2007 with a rental amount of \$1060.00 per month. The landlord testified that this tenancy began with a previous property owner. She submitted a copy of the brief, one page tenancy agreement signed by both original parties. The landlord testified that the current rental amount of \$1100.00 is payable on the first of each month. The landlord also testified that she continues to hold a \$500.00 security deposit paid by the tenant on the first day of tenancy.

The landlord testified that an ongoing problem with debris in the residential premises' yard has become more and more serious over the years. The landlord testified that she received a letter from the by-law officer for the city on February 5, 2015 to indicate that there are complaints and outstanding requests for action regarding a large accumulation of discarded construction and household materials in the back yard.

The landlord testified that, on return to the premises with the by-law officer to witness improvements based on the previous warnings, all that was found was more debris than on previous visits. She referred a photograph submitted in evidence, indicating that the photograph had been taken by the by law officer. The photograph illustrated an overwhelming amount of debris in the yard, such that the entire yard was filled with debris. She testified that she has been concerned with the hazard of fire at the property.

The landlord entered into written evidence a copy of his March 10, 2015 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by April 30, 2015, the landlord cited the following reasons for the issuance of the Notice:

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.*

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord has applied for an Order of Possession for Cause based on the above reasons. The landlord testified that the tenant has created a unsafe, unhealthy and dangerous situation at the residential premises that he rents with his family. She testified that she has made efforts to take remedial steps by warning the tenant and allowing clean-up time but that the tenant has made no efforts to improve the situation. She testified that she is concerned for her property and the tenant's family residing on the premises.

The landlord issued a 1 Month Notice to End Tenancy for Cause. The tenant did not dispute the notice to end tenancy. The landlord applied for an Order of Possession.

Analysis

The landlord has provided sufficient evidence, in her testimony as well as her documentary evidence providing an outline of the actions taken by the city with respect to the large amount of debris on the exterior of the tenant's rental unit. The landlord has provided both photographic evidence to illustrate the amount of debris as well as letters from the city requiring the landlord to take further action. The landlord has also provided testimony indicating that she has made efforts to provide the tenant with an opportunity to rectify the situation. Those efforts have not had any effective results.

Based on the landlord's undisputed evidence, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 30, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession

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 grant 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 order in favour of the landlord in the amount of \$50.00 to recover the filing fee for this application. To give effect to this order, I allow the landlord to reduce the tenant's security deposit from \$500.00 to \$450.00.

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: June 3, 2015

Residential Tenancy Branch

