



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COUNTESS GARDENS INC DBA CEDAR GREEN APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession based on a notice to end tenancy for cause and to recover the filing fee from the Tenant.

An agent for the company Landlord (the “Landlord”) appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The Tenant failed to appear for the five minute duration of the hearing and did not provide any evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord. The Landlord testified she served the Tenant personally on November 2, 2015 with a copy of the Application and the Notice of Hearing documents.

As a result, based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents pursuant to Section 89 (1) (a) of the *Residential Tenancy Act* (the “Act”). The hearing continued with the undisputed evidence of the Landlord.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy started in July 2014 for a fixed term tenancy of six months which continued on a month to month basis thereafter. A written tenancy agreement was signed and rent for the unit was payable by the Tenant in the amount of \$600.00 on the first day of each month. The Landlord testified that the Tenant paid a \$200.00 security deposit at the start of the tenancy which she still retains.

The Landlord testified that the Tenant has been causing a disturbance to other residents in the residential building. As a result, the Landlord personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on October 6, 2015.

The Notice shows a vacancy date of November 30, 2015. The Notice was issued to the Tenant for the following reasons:

- The tenant has seriously jeopardised the health or safety or lawful right of another occupant or the landlord; and
- Breached a material term of the tenancy agreement that was not corrected after a reasonable time after written notice to do so.

The Landlord testified the Tenant has not disputed the Notice. Therefore she now requests an Order of Possession to end the tenancy. The Landlord also confirmed that the Tenant is not in any rental arrears.

Analysis

I have examined the Notice provided into evidence and I find that it was completed with the correct information on the approved form as required by Sections 47(3) and 52 of the Act. I also find that the effective date on the Notice is correct in accordance with Section 47(2) of the Act, which allows for one clear rental month before the Notice becomes effective.

Section 47(4) of the Act allows a tenant to dispute a Notice by making an Application within ten days of receiving the Notice. There is no evidence before me to indicate the Tenant applied to dispute the Notice. Section 47(5) of the Act states that if a tenant fails to make an Application within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

Therefore, as the Tenant failed to make an Application under the time limits stipulated by the Act, the tenancy ended on the vacancy date of the Notice, November 30, 2015. However, the Tenant still occupies the rental unit. Therefore, the Landlord's request for an Order of Possession is granted.

As the vacancy date of the Notice has now passed, but the Tenant is not in any rental arrears, the Landlord is entitled to an Order of Possession effective for the end of January 2016. This order must be served on the Tenant and may then be filed and

enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

Since the Landlord has been successful in this Application, I also grant the \$50.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$50.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant did not dispute the Notice and still occupies the rental unit. Therefore, the Landlord is granted an Order of Possession effective at 1:00 p.m. on January 31, 2016. The Tenant must move out on this date and time. The Landlord may recover the filing fee from the Tenant's security deposit.

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 04, 2016

Residential Tenancy Branch

