



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL; FF

Introduction

This is the Landlord's application for an Order of Possession and to recover the cost of the filing fee from the Tenant.

The Landlord and her agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents were hand delivered to the Tenant on January 19, 2016.

The Tenant provided documentary evidence to the Residential Tenancy Branch on January 25, 2016. Based on the Landlord's agent's affirmed testimony and the fact that the Tenant provided documentary evidence I am satisfied that the Tenant was duly served with the Notice of Hearing documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence. The teleconference remained open for 18 minutes.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord and her agent gave the following testimony:

This tenancy began in September, 2014. Monthly rent is \$850.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00.

The Landlord has family members who wish to move into the rental unit. On November 23, 2015, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use, by handing the Notice to the Tenant at the rental unit. A copy of the Notice was provided in evidence.

The Tenant paid only \$350.00 in rent for December, 2015, and did not pay any rent when it was due on January 1, 2016. The Landlord issued a 10 Day Notice for Unpaid Rent on January 19, 2016. The Tenant has not paid any rent for February, 2016.

However, the Landlord seeks an Order of Possession based on the 2 Month Notice to End Tenancy.

Analysis

The Tenant did not sign into the Hearing, although she was duly served with notice of the Hearing. I accept the undisputed affirmed testimony provided by the Landlord's agent. I find that the Tenant was served with the Two Month Notice to End Tenancy on November 23, 2015. The Tenant did not file for dispute resolution, within 15 days of receiving the Notice.

Section 53 of the Act provides that an incorrect end-of-tenancy date on a notice to end tenancy is automatically corrected to the earliest date that complies with the Act. Based on the foregoing, I find that the Tenant is conclusively presumed under Section 49(8) of the Act to have accepted that the tenancy ended on January 31, 2016. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession.

The Landlord has been successful in her Application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Tenant. Pursuant to Section 72(2)(b) of the Act, the Landlord may deduct \$50.00 from the security deposit.

Conclusion

I hereby grant the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I Order that the Landlord deduct **\$50.00** from the security deposit, representing recovery of the cost of the filing fee. The remainder of the security deposit must be applied in accordance with the provisions of the Act.

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: February 04, 2016

Residential Tenancy Branch

