



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOOKOUT EMERGENCY AID SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

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.

An agent for the company Landlord (the “Landlord”) appeared for the hearing, along with two witnesses. All the participants provided affirmed testimony as well as documentary evidence in advance of the hearing. The Tenant failed to appear for the ten 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 and female witness testified they served the Tenant personally with a copy of the Application and the Notice of Hearing documents on February 27, 2016.

As a result, based on the undisputed evidence before me, 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 and male witness.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that this tenancy started on October 15, 2014. A written tenancy agreement for a month to month tenancy was signed by the parties. The Landlord testified that rent is payable by the Tenant in the amount of \$478.00 on the first day of each month. The Tenant paid a security deposit of \$250.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant has been causing a disturbance to other residents in the residential building. As a result, the male witness testified that he personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on January 27, 2016. The Notice shows a vacancy date of February 29, 2016 and was issued to the Tenant for the following reasons:

- The Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord; and
- The Tenant has seriously jeopardised the health or safety or lawful right of another occupant or the Landlord; and
- The Tenant has engaged in an illegal activity that has adversely affected the quiet enjoyment, security, safety or physical wellbeing of another occupant or the Landlord.

The Landlord testified the Tenant has not disputed the Notice. Therefore he now requests an Order of Possession to end the tenancy. The Landlord confirmed that the Tenant is not in any rental arrears and the Tenant was informed that the rent payments were being accepted for use and occupancy only and that they were still seeking to end the tenancy as they had made this Application shortly before the tenancy was due to end. The Landlord also requested to recover the \$100.00 filing fee for making the Application.

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 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, February 29, 2016.

However, the Tenant still occupies the rental unit. Therefore, the Landlord's request for an Order of Possession is granted.

I find the Landlord did not re-instate the tenancy by accepting payment of rent after the Notice was served because I accept the Landlord made it clear to the Tenant they were still seeking to end the tenancy. This is supported by the Landlord's making of the Application following the service of the Notice.

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 April 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.

The Act allows me to award a party the filing fee paid for an Application. Since the Landlord has been successful in this Application, I grant the \$100.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$100.00 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 April 30, 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: April 14, 2016

Residential Tenancy Branch