

DECISION

Dispute Codes: OPC and FF

Introduction

By application of December 16, 2009, the landlord seeks an Order of Possession pursuant to a one month Notice to End Tenancy for cause served in person on November 5, 2009. The landlord also seeks to recover the filing fee for this proceeding from the tenant.

Despite having been served with the Notice of Hearing, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, the hearing proceeded in her absence.

Issues to be Decided

This matter requires a decision on whether the landlord is entitled to an Order of Possession in support of the Notice to End Tenancy and recovery of the filing fee for this proceeding.

Background and Evidence

During the hearing, the landlord's legal counsel submitted an affidavit sworn by the landlord outlining a series of events leading to the Notice to End Tenancy.

Those incidents included:

1. late night visits to the rental unit
2. the smell of marijuana
3. leaving the rental unit in the hands of other persons without the landlord's consent;
4. late rent;
5. loud partying in the middle of the night;
6. theft of the landlord's tires, said by the tenant to likely have been taken by one of her guests;
7. threats to have friends damage the property and injure the landlord;
8. need for police attendance on several occasions including one in which welfare workers removed the tenants young child.

The landlord's counsel also submitted into evidence a copy of the Notice to End Tenancy on which the tenant had written and signed a tenant's notice to vacate the rental unit on December 15, 2009.

Analysis

Section 47 of the Act which sets out circumstances under which a landlord may issue a Notice to End Tenancy for cause provides that:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The principle of conclusive presumption is repeated under, the “Information for Tenants who Receive this Notice to End Tenancy” section on page 2 of the notice.

In this instance I find that the tenant has not made application to dispute the notice to end tenancy and was obliged to vacate the rental unit on the effective date of the notice.

In addition, the tenant authored her own tenant’s Notice to End Tenancy on the landlord’s notice, adding her signature and giving an end of tenancy date of December 15, 2009. As noted at Policy Guideline 11, para 3, “A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy.”

Therefore, I find that this tenancy has ended on both the landlord’s notice and the tenant’s notice and that the landlord is entitled to an Order of Possession under both provisions under section 55 of the Act as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that the Order of Possession should take effect two days from service of it on the tenant.

I further find that the landlord is entitled to recover the filing fee for this proceeding and hereby authorize that he may do so by retaining \$50 from the tenant's security deposit.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, effective two days from service of it on the tenant.

The landlord is entitled to recover the \$50 filing fee from the tenant's security deposit.

The landlord remains at liberty to make application for any damages or losses as may be ascertained at the conclusion of the tenancy.

January 25, 2010