

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was scheduled to hear the landlord's request for an Order of Possession for cause. The landlord also requested recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

Both parties had served evidence upon the Residential Tenancy Branch but not the other party. I excluded all documentary evidence except the 1 Month Notice to End Tenancy which the tenant confirmed receiving and verified as the same document provided to me for this hearing by the landlord. The parties provided verbal testimony with respect to the tenancy, events preceding the issuance of the Notice to End Tenancy and service of documents.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Award of the filing fee.

Background and Evidence

I heard undisputed testimony from the parties as follows. The tenancy commenced September 2009 and the tenant is required to pay rent of \$1,050.00 on the 1st day of every month. On March 6, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) and the tenant received it on March 9, 2010 by personal service. The Notice indicates the tenancy will end on April 6, 2010 and that the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonable disturbed another occupant or the landlord; and
- Tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord.

The tenant did not dispute the Notice within 10 days of receiving the Notice. The landlord made this application for an Order of Possession after the 10 day dispute period was over. The landlord was asked to explain why the Notice was issued. The landlord stated that she had received numerous complaints from neighbours about the noise and activities of the tenant and her guests and that the property had been under police surveillance. The landlord also testified that the noise coming from the rental unit and the frequent coming and going of visitors also disturbed the landlord and her family. The landlord claimed these circumstances caused the landlord a great deal of stress and that the behaviour continued despite giving the tenant several verbal notifications and one written warning prior to the issuance of the Notice.

The tenant stated that she was pregnant when she was served with the Notice and did not know how to dispute the Notice. The tenant also explained that she felt the notice was invalid since the effective date was incorrect and that complaints had originated from neighbours and not the landlord. The tenant acknowledged receiving the written warning but testified that she had complied with the landlord's verbal requests to reduce the volume of noise coming from the rental unit.

The tenant explained it will be difficult to move as she has three children. In recognition of the tenant having school aged children attending school in the area, the landlord was agreeable to permitting the tenancy to continue until June 30, 2010.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy for cause by giving the tenant with a 1 Month Notice to End Tenancy for Cause. Section 47 also provides that a tenant who receives such a Notice may dispute the Notice within 10 days of receiving the Notice; however, if the tenant does not dispute the Notice the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date. In this case, the tenant was given such a Notice on March 9, 2010 and did not dispute the Notice. Therefore, in accordance with the Act, the tenant is conclusively presumed to have accepted that the tenancy would end and the tenant would have to vacate the unit by the effective date.

Where an effective date is incorrectly stated on the Notice, section 53 of the Act provides that the effective date is automatically changed to comply with the Act; however an incorrect effective date does not invalidate a Notice. In this case, I find the effective date was incorrectly stated on the Notice and the effective date was automatically change to read April 30, 2010.

Although the tenant claimed that she did not know how to dispute the Notice, I am satisfied the tenant received both pages of the Notice and on the second page information about how to dispute a Notice is provided to tenants. The second page also informs parties that an incorrect move-out date does not invalidate the Notice. While I appreciate the tenant was pregnant when she received the Notice, the tenant was at liberty to request the assistance of a person to act on her behalf in order to dispute the Notice.

As the tenant was informed at the hearing, the time to dispute the Notice was within 10 days of receiving the Notice. However, I have considered the points raised by the tenant and I accept that the landlord was also disturbed by the noise created by the tenant and her visitors and had a valid reason to issue the Notice upon the tenant.

In light of the above findings, the landlord's request for an Order of Possession is granted. I recognition of the landlord's willingness to permit the tenancy to continue

until June 30, 2010 I provide an Order of Possession to the landlord effective June 30, 2010. The landlord must serve the Order of Possession upon the tenant and may enforce it The Supreme Court of British Columbia as an Order of that court.

I do not award the filing fee to the landlord as I find the landlord chose to make this application before the effective date on the Notice and I did not hear sufficient evidence that would indicate the tenant had informed the landlord she would not vacate the unit by the effective date.

Conclusion

The tenancy shall end June 30, 2010 and the tenant must vacate the rental unit by that date. The landlord has been provided an Order of Possession effective June 30, 2010 to serve upon the tenant.

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: May 13, 2010.

Dispute Resolution Officer