



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for an order of possession for cause pursuant to section 55

The tenant did not attend this hearing, although I waited until 0944 in order to enable the tenant to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Service

The landlord gave undisputed sworn testimony that on 30 September 2014, he served a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant by delivering one copy to the tenant's mailbox and posting another copy to the tenant's door. This posting was witnessed by the landlord's wife and the landlord took a picture of the posting. I am satisfied that the 1 Month Notice was served on 3 October 2014 in accordance with sections 88 and 90 of the Act.

The landlord testified that he served the tenant with the dispute resolution package on 2 November 2014 by posting the dispute resolution package to the tenant's door. On the basis of this evidence, I am satisfied that the tenant was deemed served with notice of this application, on 5 November 2014, pursuant to sections 89(2) and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the uncontested, sworn testimony of the landlord, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

At the beginning of the tenancy, the tenant was provided with a copy of the strata bylaws.

The 1 Month Notice sets an effective date of 31 October 2014. The 1 Month Notice sets out, among other reasons, that the tenant or person permitted on the property by the tenant has "*seriously jeopardized...lawful right of...the landlord*".

The tenant did not apply for dispute resolution within ten days of receiving the 1 Month Notice.

The landlord gave undisputed sworn testimony that he had received numerous complaints from the strata property management company regarding the conduct of the tenant. The major problems were in respect of smoking in the building, threatening the Canada Post letter carrier, causing damage to other occupants' property, propping open doors, and noise and police complaints. These complaints had resulted in fines to the landlord from the strata and notice from Canada Post that mail delivery would be withdrawn.

In support of his application, the landlord provided several letters from the strata property management company, which details the complaints against the tenant.

The landlord provided sworn testimony that he provided notification to the tenant to stop the behavior and had provided an additional copy of the strata bylaws to remind the tenant of his obligations.

Analysis

In an application for an order of possession on the basis of a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met. Subparagraph 47(1)(d)(ii) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant or person permitted on the residential property by the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. The landlord has set out in his 1 Month Notice, among other reasons, that the tenant seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The landlord has provided ample, uncontested and sworn evidence that the tenant has seriously jeopardized the lawful interest of the landlord by continually and flagrantly violating the strata bylaws. Furthermore, pursuant to subsection 47(5) of the Act, where a tenant does not apply for dispute resolution within ten days of receiving a 1 Month Notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. The tenant has not applied for dispute resolution.

For the reasons outlined above, I find that the 1 Month Notice is validly issued and will not consider the other reasons for cause set out by the landlord in the 1 Month Notice.

Pursuant to subsection 47(2), the earliest effective date for the 1 Month Notice would be 30 November 2014. The landlord has set an effective date in the 1 Month Notice of 31 October 2014. This effective date is too early. Section 53 operates in this case to change the effective date to 30 November 2014.

As the tenancy is ended 30 November 2014, the landlord is entitled to an order of possession for that date.

Conclusion

The landlord is provided with a formal copy of an order of possession effective 1 pm on 30 November 2014. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 18, 2014

Residential Tenancy Branch