



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

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 and to recover the filing fee from the Tenant.

The male Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. The male Landlord explained that he was also the agent of the company Landlord that had issued the notice to end tenancy.

The Tenant failed to appear for the 20 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 testified he served the Tenant by registered mail on October 11, 2015 with a copy of his Application and the Notice of Hearing documents. The Landlord provided a copy of the Canada Post tracking receipt as evidence to verify this service method.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on October 16 2015 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord testified that he had provided a copy of the notice to end tenancy into evidence, which was not before me in the file. However, I was able to determine that the Landlord had mistakenly faxed the notice to end tenancy to another file number. Therefore, pursuant to the Rules of Procedure, I allowed the Landlord to fax another copy of the notice to end tenancy to me during the course of this hearing.

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 April 1, 2014 for a fixed term tenancy of three months which continued on a month to month basis thereafter. A written tenancy agreement was signed and rent for the unit was payable by the Tenant in the amount of \$740.00 on the first day of each month. The Landlord testified that the Tenant paid a \$370.00 security deposit at the start of the tenancy which he still retains.

The Landlord testified that the Tenant and her Co-tenant (who has since vacated the rental unit) were operating an illegal female escort business from the rental unit which was causing a significant interference to other residents as well as jeopardising their safety.

As a result, the Landlord personally served the Tenant with a 1 Month Notice to End Tenancy for Cause (the "Notice") on August 28, 2015. The Notice shows a vacancy date of September 30, 2015. The Landlord testified the Tenant has not disputed the Notice and therefore he now requests an Order of Possession to end the tenancy as the illegal activity is continuing. The Landlord also confirmed that the Tenant is in rental arrears and has not paid rent for November or December 2015.

Analysis

I have examined the Notice faxed to me by the Landlord during the hearing 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 that 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, September 30, 2015.

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

As the vacancy date of the Notice has now passed the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. 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.

Since the Landlord has been successful in this Application, I also grant the \$50.00 filing fee for the cost of having to make this Application. The Landlord may obtain this relief by deducting \$50.00 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 two days after service on the Tenant. 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: December 07, 2015

Residential Tenancy Branch

