



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of anyone appearing on behalf of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

CS passed away on January 26, 2013. It appears that she passed away without a will and no one has come forward to act as her personal representative.

The definition of tenant under the Residential Tenancy Act provides as follows:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

The representative of the landlord testified that he served a copy of the 10 day Notice to End Tenancy on the Tenant by mailing by registered mail to the rental unit on April 11, 2013. Further, he testified he mailed a copy of the Application for Dispute Resolution/Notice of Hearing, by registered mail addressed to the Estate of the deceased at the rental unit, to the deceased 's sister in Ontario, to the B.C. Public Trustee's Office, to the B.C. Coroner's service and to the Victoria Police on April 24, 2013. The only party who responded was the B.C. Coroner's Office who advised that they had no interest in the rental unit and would not be participating in the hearing. They also confirmed that the sister the landlord sent the Application for Dispute was the primary next of kin of the deceased. The other parties did not respond to the landlord

or appear at the hearing. The deceased's sister previously asked for permission to remove papers and jewelry but indicated to the landlord that she does not intend to apply to be named the personal representative as there is insufficient money in the deceased's estate. I determined there was sufficient service for the purpose of obtaining an Order for Possession.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on November 1, 2002. The present rent is \$596 per month. The tenant paid a security deposit of \$240 at the start of the tenancy. The rent for February, March, April and May has not been paid and the sum of \$2384 remains outstanding.

The landlord testified that he wishes to regain possession of the rental unit but he was reluctant to do so without an Order for Possession. The landlord further stated that he was not interested in obtaining a monetary order at this time.

Analysis - Order of Possession:

Section 44(1)(d) of the Residential Tenancy Act provides as follows:

44 (1) A tenancy ends only if one or more of the following applies:

- (d) the tenant vacates or abandons the rental unit;

I determined the landlord was entitled to an Order for Possession. The tenant has passed away and as a result can be considered to have abandoned the rental unit. The rent has not been paid for 4 months and it does not appear that her next of kin is interested in paying the rent for the period of time it takes to remove her belongings.

The landlord is also entitled to an Order for Possession on the basis of non-payment of rent. There is outstanding rent. The Tenant's personal representative has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession.

I ordered that the respondent may be served substitutionally by posting to the door and service shall be deemed to take effect forthwith upon service. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

I dismissed the claim for a monetary order and an order to retain the security deposit with liberty to re-apply as the landlord indicated that he was not interested in obtaining a monetary order at this time.

The landlord is referred to the provisions of the Residential Tenancy Act and Regulations which set out the landlord's obligations dealing with the abandonment of personal property.

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 21, 2013

Residential Tenancy Branch

