



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

2

DECISION

Dispute Codes: FF, MNR, 0

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence to tell the truth in this Hearing and this matter proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord testified that the Tenant has paid the Landlord, for use and occupancy only, for the months of February, March and April, 2009. The Landlord withdrew his application for a Monetary Order for \$715.00 and the Hearing proceeded with respect to the Landlord’s application for an Order of Possession and recovery of the filing fee.

Issue(s) to be Decided

This is the Landlords’ application an Order of Possession and to recover the filing fee from the Tenant.

1. Did the tenancy end on January 31, 2009, pursuant to a lease agreement between the Landlord and the Tenant?
2. Is the Landlord entitled to recover the cost of the filing fee from the Tenant?

Background and Evidence

The Landlord and the Tenant entered into a fixed term Tenancy Agreement on December 30, 2008, a copy of which was entered into evidence.

The Tenancy Agreement dated December 30, 2008, is for a one month term, ending on January 31, 2009. The Landlord testified that the Tenant remains in the rental unit. The Landlord asked for an order of possession.

The Tenant agreed that she signed the Tenancy Agreement, but did not understand that she was agreeing to vacate the rental unit on January 31, 2009. The Tenant stated that she is a long term tenant, having lived in the rental unit for 7 ½ years. The Tenant stated that her previous tenancies with this Landlord have always continued for another fixed term.

The Landlord stated that he provided the Tenant with a receipt for the months of February, March and April and indicated on the receipt that he was accepting the payments for “use and occupancy only”. The Landlord said he explained to the Tenant that he was not reinstating the tenancy by accepting her payments.

The Tenant said that she understood what the Landlord meant about “use and occupancy” and thought that she could dispute the date of the end of the tenancy at today’s Hearing.

Analysis

Paragraph 4 of the Tenancy Agreement dated December 30, 2008, states:

“The tenancy created by this Agreement starts on January 1, 2009 and is for a fixed term ending on the 31 day of January, 2009. At the end of this time the tenancy is ended and the tenant must vacate the rental unit.”

The Tenant and the Landlord both signed their initials beside paragraph 4.

On the last page of the Tenancy Agreement dated December 30, 2008, beside the Tenant’s signature is the notation “Final Lease Agreement”.

The Tenant understood that the payments she gave to the Landlord in February, March and April were for “use and occupancy only” and did not reinstate the tenancy. The Tenant did not make an application to dispute the end of tenancy.

Based on the affirmed testimony and evidence of both parties, I find that the tenancy ended on January 31, 2009. Pursuant to Section 55(2)(c) of the Act, the Landlord is entitled to an Order of Possession. The Landlord gave the Tenant use and occupancy for the month of April, 2009, and therefore the Order of Possession is effective at 1:00 p.m. on April 30, 2009.

The Landlord has been successful in his application and is entitled to recover the cost of the filing fee from the Tenant.

Conclusion

Under Section 72(1) of the Act, I grant the Landlord a monetary order in the amount of \$50.00 against the Tenant. This order may be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Under section 55(2)(c) of the Act, I grant the Landlord an Order of Possession effective 1:00 p.m., April 30, 2009. This order must be served on the Tenant and may be filed in

the Supreme Court of British Columbia and enforced as an order of that Court.

April 9, 2009
