



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on January 16, 2010. The tenant confirmed receipt of these documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy started on February 01, 2006. Rent for this basement suite is \$675.00 per month and is due on the first of each month. The tenant paid a security deposit of \$350.00 on or about January 29, 2006.

The landlords served the tenant with a Two Month Notice to End Tenancy for the landlords use of the property on January 13, 2010 with a vacate date of March 31, 2010. The reason given on this Notice is that the rental unit will be occupied by the landlord, or the landlords spouse or a close family member of the landlord or the landlord's spouse. The landlord's testify that they



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intend to use the basement suite as an extension of the family home as they currently live just on the main floor.

The tenant has not disputed this Two Month Notice and states that she intends to vacate the rental suite on or about March 15, 2010. The tenant questions the landlord's application as this was filed on the same day the Two Month Notice was served to the tenant. The tenant feels the landlords have acted prematurely in filing their application as the tenant had 15 days to dispute the Notice.

Analysis

I have reviewed the evidence presented at this hearing; I find the landlords did act prematurely in filing their application however this hearing was held past the 15 days the tenant had to dispute the Notice and therefore as she remains in the rental suite the landlord is entitled to request an Order of possession. Section 55(3) of the Act states:

The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

Based on the above I find the landlord is entitled to an Order of Possession for March 31, 2010.

The landlords have also requested the tenant pay the \$50.00 filing fee for this application. I find that as the landlords filed their application prematurely before the tenant had opportunity to dispute the Notice and the landlords have not provided any evidence that the tenant will not move from the rental unit by the date given to vacate the unit. I find the landlords must bear the cost of filing their own application.



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Conclusion

An Order of Possession has been issued to the landlords. A copy of the Order must be served on the tenant and the tenant must vacate the rental unit by **12 Noon on March 31, 2010**. The Order of Possession may be enforced in the Supreme Court of British Columbia.

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: February 24, 2010.

Dispute Resolution Officer