



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPE, OPR, OPC, MNR, FF, ET, Other

Introduction

This hearing was convened in response to the landlord's application seeking:

1. An Order of Possession;
2. A monetary Order for unpaid rent in the sum of \$3,000.00;
3. An Order to End this tenancy early and without notice; and
4. Recovery of the filing fee paid for this application.

Only the landlord appeared at the hearing. The landlord testified that he served the tenants with the 10 day Notice to End Tenancy by way of posting the Notice to the rental unit door on March 9, 2011 and with the Application for Dispute Resolution hearing package by way of registered mail.

The landlord gave evidence under oath.

Issue(s) to be Decided

Is the landlord entitled to the Orders sought?

Background and Evidence

The landlord/applicant testified that there is actually only an employment contract and no tenancy agreement between himself and the tenants/respondents. The landlord testified that the employment contract has ended but the respondents refuse to leave the subject property. The landlord says he has tried to enlist the assistance of the police but they are declining to remove the respondents without confirmation from the Residential Tenancy Branch that the respondents are not tenants under the *Residential Tenancy Act*. In order to obtain confirmation from the Residential Tenancy Branch the landlord served the "tenants" with the 10 day Notice to End Tenancy and the Application for Dispute Resolution. The landlord did this to obtain a hearing with the Residential Tenancy Branch in order to ask for a letter confirming that the respondents are not tenants so the police will remove them.

As proof that the respondents are not tenants the landlord submitted an agreement between the corporate landlord and the male person named as tenant. The Agreement dated November 12, 2010 states in part, that the tenant was to do certain work around the property such as removing and disposing of materials, machinery and/or equipment in exchange for which the tenant may occupy the premises until December 8, 2010. A second paragraph indicates that if the tenant removes and disposes of the materials, machine or equipment and completes minor repairs to the roof of the property he may continue to occupy the property until December 31, 2010. The final paragraph of the Agreement states that "The parties agree that this does not constitute a Landlord/Tenant relationship".

Analysis

Despite the notation in the tenancy agreement that the parties agreed that this relationship was not a landlord/tenant relationship I find that not to be the case. The landlord allowed the tenant to live in the rental property in exchange for work performed in lieu of rent. This is a tenancy. If not a tenancy it is a licence to occupy over which I also have jurisdiction and, even though the parties agreed they are not in a landlord/tenant relationship, parties to a tenancy or licence to occupy cannot contract outside of the Residential Tenancy Act and, if they do, that portion of their contract is of no force or effect.

The evidence is that the landlord served the tenants with a Notice to End Tenancy. The tenants had 5 days within which to dispute that Notice and they did not do so. When tenants fail to dispute a notice the Act states that the tenants are presumed to have accepted that the tenancy ended on the effective date set out in the Notice to End Tenancy. As that date has now passed, the landlord is entitled to the Order of Possession as claimed

With respect to the landlord's claim for recovery of rental arrears, I find that the landlord has failed to prove the dollar value of the rent agreed to and I therefore dismiss his claim for \$3,000.00 in rental arrears.

Having been only partially successful in this application I also dismiss the landlord's application for recovery of the filing fee.

Conclusion

The landlord is provided with a formal copy of an order of possession. 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 Section 9.1(1) of the *Residential Tenancy Act*.
