



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord use of property pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. At the hearing, the landlord amended her application from a request for an Order of Possession for unpaid rent to an Order of Possession based on her 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice) issued on October 31, 2011 with an effective date of January 1, 2012. The landlord entered into written evidence a statement from a person who witnessed her hand the 2 Month Notice to the tenant on October 31, 2011. She also entered into written evidence a statement from a witness who saw her hand a copy of the landlord's dispute resolution hearing package to the tenant at 8:05 p.m. on November 15, 2011. I am satisfied that these documents were served to the tenant in accordance with the *Act*.

The tenant was represented at this hearing by a social worker who acted as her agent for the purposes of requesting an adjournment of this hearing. The agent explained that since December 6, 2011 the tenant had been confined to the hospital where the agent works as a social worker. The agent said that as the tenant is presently unable to look after this matter for herself, she asked the agent to request an adjournment until such time as the tenant is out of the hospital and able to look after her affairs.

The landlord said that she was unaware that the tenant was hospitalized, but said that she has properly issued a 2 Month Notice to the tenant. She said that another Dispute Resolution Officer (DRO) of the Residential Tenancy Branch made a decision regarding her previous application for dispute resolution on December 6, 2011. In that decision, the DRO found that the landlord's 2 Month issued on August 30, 2011 was effective on November 20, 2011. The landlord said that the tenant has not paid rent that became

owing on November 20, 2011 and, if the tenant remains in the hospital, may not pay rent owing as of December 20, 2011. She said that she wanted to proceed with this hearing because she was expecting to be able to move into this trailer as of January 1, 2012 and did not want to further delay this process.

At the hearing, the landlord also withdrew her application for the monetary issues before me at this time as she plans to pursue the monetary issues at the end of this tenancy. Her application for a monetary Order and recovery of her filing fee is withdrawn.

Under these circumstances, the only issue remaining before me is the landlord's amended application for an end to this tenancy and an Order of Possession. Under these changed circumstances and as no prior notice was provided by the tenant or her agent that the tenant would be seeking an adjournment, I found that an adjournment would be unfair to the landlord. The landlord said that she was willing to speak with the tenant when she is able to do so, to try to make suitable arrangements to end her tenancy once she returns from the hospital if the tenancy is ended and an Order of Possession granted.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord use of the property on the basis of the 2 Month Notice?

Background and Evidence

As noted in the previous decision of December 6, 2011, monthly rent for this tenancy is set at \$650.00, payable in advance on the 20th of each month. The December 6, 2011 decision addressed the landlord's application to obtain an Order of Possession on the basis of the tenant's failure to pay rent that was considered owing by the landlord on October 20, 2011. The DRO found that the tenant was entitled to forego paying rent for the last month of her tenancy from October 20, 2011 until November 20, 2011 and, as such, refused to issue an Order of Possession on the basis of the landlord's application to end tenancy for unpaid rent.

The landlord asked for an Order of Possession based on a subsequent 2 Month Notice she issued to the tenant on October 31, 2011 seeking a January 1, 2012 end to this tenancy. She testified that she intended to use the tenant's rental unit herself.

At the hearing, I noted that the landlord had submitted copies of three different 2 Month Notices, but had not attached page 2 of any of these copies. I asked that the landlord fax the second page of the 2 Month Notice of October 31, 2011 through the local Service BC office no later than 4:00 p.m. on Monday, December 19, 2011. The landlord

subsequently faxed a copy of the second page of that 2 Month Notice by 1.30 p.m. on the day of the hearing.

Analysis

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice of October 31, 2011. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days leads to the end of her tenancy on the effective date identified on that Notice, in this case January 1, 2012. Based on the undisputed oral testimony of the landlord, I accept that the landlord is planning to occupy the rental unit herself once this tenancy ends. I find that the landlord is entitled to an Order of Possession to take effect on January 1, 2012. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by that time, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The landlord is provided with a formal copy of an Order of Possession to take effect by 1:00 p.m. on January 1, 2012.

The landlord's application for a monetary award for unpaid rent and for recovery of her filing fee are withdrawn.

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 20, 2011

Residential Tenancy Branch