



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This matter dealt with an application by the Landlord for an Order of Possession. The Parties agree that on November 29, 2011 the Tenants were served in person with the Landlord's application and Notice of Hearing and that on December 7, 2011 the Tenants were served with the Landlord's evidence package. The Parties also agree that on December 13, 2011 the Tenants delivered their evidence package to the Landlord's legal representative in this matter.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started in the early 1990s. The Tenant, D.K., is the son of the Landlord and he resides in the rental unit with his spouse, L.K. The Parties participated in a previous dispute resolution hearing on October 7, 2011 to hear the Tenants' application that the Landlord comply with the Act by serving them with an approved Notice to End the Tenancy. It was the Landlord's position in the previous proceedings that the Residential Tenancy Branch did not have jurisdiction over this tenancy because the Tenants did not pay rent. However, the Dispute Resolution Officer found that the Parties' arrangement was a *licence to occupy* which came under the jurisdiction of the Act. Consequently, the Dispute Resolution Officer stated that if the Landlord wished to end the tenancy she would have to serve the Tenants with an approved Notice to End Tenancy that complied with the Act.

The Landlord served the Tenants in person on October 7, 2011 and again on October 31, 2011 with a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both Notices stated that the sole ground upon which the Notice was based was that "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The Landlord's counsel said the second 2 Month Notice was served on the Tenants because an amendment to the Agreement for Purchase and Sale was completed on

October 31, 2011 and a condition of it was that the vendor (or Landlord) agreed to serve the Notice. The amended agreement also contains the following terms:

- the buyers and seller acknowledge that the current occupants of the property must be served with a new 2 Month Notice on or before October 31, 2011; and
- the seller agrees to serve a new Notice on or before October 31, 2011.

The Tenants argued that the Landlord did not comply with s. 49(5)(c) of the Act which requires that the buyers give the Landlord a written request to serve the Tenants with a 2 Month Notice. Counsel for the Landlord argued that it could be implied from these terms that the purchasers had requested that the vendor (or Landlord) serve the Tenants with the 2 Month Notice.

Analysis

Section 49(8) of the Act says that a Tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property may dispute that Notice by making an application for dispute resolution no later than 15 days after they receive the Notice. Section 49(9) of the Act says that if a Tenant does not apply for dispute resolution to dispute a 2 Month Notice then he or she is deemed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental property at that time.

I find that the Tenants were served in person on October 7, 2011 and October 31, 2011 with a 2 Month Notice to End Tenancy for Cause dated October 7, 2011 and October 31, 2011 respectively. Consequently, ***the Tenants had until November 15, 2011 at the latest*** to apply for dispute resolution to cancel the last of the 2 Month Notices. However the Tenants did not apply to cancel the Notices. The Tenant, D.K., claimed he did not dispute the 2 Month Notices because he was waiting for some evidence that the buyers had asked the Landlord in writing to serve the Notice. I do not give a lot of weight to this argument because the Tenant, L.K., claimed that the Tenants did not take issue with the Notice and have been preparing to move out on December 31, 2011 but when served with the Landlord's hearing package took issue with the allegation that they might not move out on their own initiative.

Given that the Tenants have not disputed the 2 Month Notice to End Tenancy dated October 7 and October 31, 2011, I find that they are conclusively presumed to have accepted that the tenancy would end on the effective date of the Notice, December 31, 2011. It is for this reason that I find that the Landlord is entitled pursuant to s. 55(2)(b) of the Act to an Order of Possession to take effect on December 31, 2011. Given that the Notice was not disputed by the Tenants, I also find that it is unnecessary to determine if the Landlord has sufficient evidence to make out the ground stated on the 2 Month Notice to End Tenancy.

Conclusion

The Landlord's application is granted. An Order of Possession to take effect at 1:00 p.m. on December 31, 2011 has been issued to the Landlord. The Order must be served on the Tenants and 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: December 19, 2011.

Residential Tenancy Branch