



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and to recover the filing fee for the Application.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by personal delivery on January 6, 2012; however, the tenant did not appear at the hearing. The landlord successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenant breached the Act, a mutual agreement or tenancy agreement, entitling the landlord to an Order of Possession and to recover the filing fee?

Background and Evidence

I heard testimony that this month to month tenancy began on January 1, 2011, monthly rent is \$725.00 due on the first day of the month, and the tenant paid a security deposit of \$353.00 on December 1, 2010.

The landlord testified and supplied evidence that the tenant was served a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice") on November 1, 2011, via personal delivery, with a stated effective move out date of December 31, 2011.

The Notice explains that the tenant had fifteen days to dispute the Notice. It also explains that if the tenant does not file an Application to Dispute the Notice within fifteen days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice. The tenant did not file an Application to dispute the Notice.

Additionally, the landlord submitted a written notice from the tenant, dated December 1, 2011, which informed the landlord that she, the tenant, was ending the tenancy and moving out of the rental unit no later than December 31, 2011.

The landlord stated that, despite issuing a written notice to end the tenancy, the tenant failed to move out and remains in the rental unit.

Analysis

Based on the above testimony, evidence, and on a balance of probabilities, I find as follows:

As a result of the landlord's written submissions, I have amended the landlord's application to include a request for an order of possession based upon the tenant's breach of an agreement.

Section 44 of the Residential Tenancy Act provides for different ways a tenancy may end, with (1) (c) providing that the tenancy may end if the landlord and tenant agree in writing to end the tenancy.

In the circumstances before me, I find the tenant issued the landlord a written, signed notice that she was ending the tenancy on or before December 31, 2011, and that she failed to move out. The written document states that the ending of the tenancy was as a result of a mutual agreement. I therefore accept and find that this was a mutual agreement to end the tenancy.

As a result, I therefore find that the landlord is entitled to an order of possession effective 2 days after service on the tenant.

Conclusion

I am enclosing an Order of Possession with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Supreme Court of British Columbia should the tenant fail to comply with this Order of Possession.

I also find that the landlord is entitled to recovery of the filing fee, and he is directed to withhold \$50.00 from the tenant's security deposit in satisfaction of this amount.

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: January 17, 2012.

Residential Tenancy Branch