



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, FF

Introduction

The hearing was scheduled in response to the an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Landlord's Use of Property and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord stated that he personally served the male Tenant with the Application for Dispute Resolution, the Notice of Hearing, and the Notice of Hearing on December 22, 2011. The male Tenant acknowledged receipt of these documents, which he showed to the female Tenant, who was present at the hearing.

The Landlord stated that he sent a second copy of the Application for Dispute Resolution, the Notice of Hearing, and the Notice of Hearing to the rental unit, in a package addressed to both Tenants, on December 24, 2011. The Landlord cited a Canada Post tracking number to corroborate this statement. The male Tenant stated that this package has not been received.

The Tenant submitted no evidence in regard to this matter.

The male Tenant stated that French is his first language; that he has difficulty understanding English; that he cannot read English; and this the co-Tenant is too depressed to actively participate in this hearing. I note that the male Tenant had no difficulty communicating at the hearing.

The Landlord's Application for Dispute Resolution was amended to reflect the proper spelling of the female Tenant's name, as provided at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession and to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 13, 2010; that the parties signed a written tenancy agreement; and that the Tenant is obligated to pay monthly rent of \$1,200.00.

The Landlord stated that the rent is due by the first day of the month, as is outlined on the tenancy agreement. The male Tenant stated that the rent is due by the fifth day of each month and that he was sometimes permitted to pay later if he did not have the funds. The tenancy agreement was not submitted in evidence.

The Landlord and the Tenant agree that the male Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property. The Landlord stated that the Notice was personally served on November 23, 2011 and the Tenant stated that it was personally served on December 01, 2011.

The Landlord stated that he also sent a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property to the rental unit, via registered mail, on November 23, 2011. He stated that the Notice to End Tenancy was not claimed by the Tenant and it was returned to the Landlord. The male Tenant stated that they did not receive the Notice to End Tenancy in the mail.

The Two Month Notice to End Tenancy that was served to the Tenant declared that the Tenant must vacate the rental unit by January 30, 2012; that all of the conditions for 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; and that the Tenant must move out of the rental unit by the date set out on the Notice if they do not dispute the Notice within fifteen days of receiving it. I have no evidence that the Tenant disputed the Notice to End Tenancy.

At the hearing the Tenant stated that he has no place to go and he does not plan to move out of the rental unit until he finds someplace to move.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$1,200.00.

There is a general legal principle that places the burden of proving a fact on the person who is making a claim, not on the person who is denying the claim. In these circumstances, the burden of proving when rent is due rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that the rent was due by the first day of each month. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as the tenancy agreement, that corroborates the Landlord's statement that it was due on the first day of the month. On the basis of the testimony of the Tenant, I find that the rent was due by the fifth day of the month.

I find that the Landlord has submitted insufficient evidence to show that the Two Month Notice to End Tenancy was personally served to the male Tenant on November 23, 2011. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as a witness, that corroborates the Landlord's statement that it was served on that date. On the basis of the testimony of the Tenant, I find that the Notice was served on, or before, December 01, 2011.

As I have determined the Two Month Notice to End Tenancy was personally served, I find that it is not necessary to determine whether the Notice to End Tenancy was also served by registered mail. Whether the Two Month Notice to End Tenancy was served on or before December 01, 2011 is not particularly relevant to my decision in this matter. I find that the Two Month Notice to End Tenancy, served pursuant to section 49 of the *Act*, declared that the Tenant must vacate the rental unit prior by January 30, 2012.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy for Cause must end the tenancy effective on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the Tenant is deemed to have received this Notice on December 01, 2011 and rent is due on the fifth day of each month, the earliest effective date that the Notice is February 04, 2012.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is February 04, 2012.

Section 49(9) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that tenants must vacate the rental unit by that date unless the tenant disputes the notice within fifteen days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Notice to End Tenancy, I find that the Tenants accepted that the tenancy was ending the effective date of the Notice, which is February 04, 2012.

I find that the Application for Dispute Resolution has merit and I find that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution from the Tenant.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on February 04, 2012. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$50.00, which is compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant a monetary Order in 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 12, 2012.

Residential Tenancy Branch