



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MNDC, MNSD and FF

Introduction

This application was brought by the landlords on February 23, 2012 seeking an Order of Possession to uphold a Notice to End Tenancy served by the tenant on February 1, 2012, setting an end of Tenancy date of March 1, 2012.

As a preliminary matter, the landlords had also submitted additional evidence on March 5, 2012 adding claims for unpaid rent/loss of rent and a claim on the tenant's security deposit. However, in order to modify the original application, the landlords would have been required to have their application amended at least seven days before the scheduled hearing.

The application has not been amended. Therefore, I dismiss the monetary claims with leave to reapply. In addition, I note that the extent of damage or losses cannot be fully ascertained until the tenant has vacated the rental unit.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession to uphold the tenant's notice to end tenancy.

Background and Evidence

This tenancy began on December 15, 2005. Rent is \$1,650 per month and the landlords hold a security deposit of \$825 paid on November 11, 2005. The present landlords purchased the rental unit in 2007 with the tenancy in place and they bear rights and responsibilities of the original landlord.

The subject tenant served the landlords with a Notice to End Tenancy dated January 30, 2012 setting an end of tenancy at “the end of February,” and noted, I will return the keys back to you at 11 a.m. on March 1, 2012.”

The landlords replied by email of February 1, 2012 acknowledging receipt of the notice and asked that the tenant return the key on February 29, 2012 in the event a new tenant could be found for March 1, 2012.

During the hearing, the landlords gave evidence that the tenant had assisted them in showing the rental unit to prospective tenants on February 14th or 16th. As it happened, the prospective tenants signed a rental agreement for a tenancy to begin March 1, 2012 and paid a security deposit of \$1,050 on February 16, 2012.

On February 18, 2012, the subject tenant wrote to the landlords asking them to disregard the notice to end tenancy given in his letter of January 30, 2012.

On February 20, 2012, the landlords replied to the tenant declining to extend the tenancy, and stating that the fully expected him to vacate at the end of February 2012 as stated in his notice.

The landlord's stated that the prospective tenants who signed the new agreement on February 16, 2012 had to find temporary accommodation and have stated they may take action to recover storage fees and other costs resulting from the rental unit not being available as promised.

The tenant submits that his notice to end tenancy cannot be binding because of a number of defects: he did not sign it, it was received a day late, he intended it to take effect on March 1st while the landlord asked that the key be returned on February 29, 2012, and the names of present landlords differed from those on the rental agreement.

Analysis

Residential Policy Guideline 11 provides that: “A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy.” In the present matter, the landlords made a new contract on the basis of the notice and did not agree that it could be withdrawn.

As to the defects in the notice, it was the tenant's intention that it be effective when he served it, and in doing so passed the choice of whether to accept it with its deficiencies to the landlords.

The landlord's accepted the notice and it, therefore, became binding on the tenant.

Therefore, I find that the landlords are entitled to an Order of Possession to take effect two days from service of it on the tenant.

I further find that, as the application has succeeded on the major issue, the landlords are entitled to recover the filing fee for this proceeding from the tenant and I hereby authorize that they may do so by withholding \$50 from the tenant's security deposit.

Conclusion

The landlords' copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

The landlords are authorized to retain \$50 of the tenants' security deposit in recovery of the filing fee for this proceeding.

The landlords remain at liberty to make application for any losses or damage as may be ascertained at the conclusion of the tenancy.

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: March 12, 2012.

Residential Tenancy Branch