



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for landlord's use or property, a monetary order for unpaid rent and recovery of the filing fee

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

On February 29, 2012 the landlord served the tenant's with a 2 Month Notice to End Tenancy for Landlord's Use of Property:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that they were previously tenants in one of the rental units in this duplex and vacated when the property was put up for sale. The landlord stated that they then purchased the second half of the duplex to occupy in February 2012 on the condition that the previous owner/landlord serve the tenant's with the 2 month notice to end tenancy for landlord's use of property. The property transferred to the new owner's/landlords on March 16, 2012. The tenants were served in person with a 2 month notice to end tenancy with an effective end of tenancy date of April 30, 2012.

The landlord stated that the tenants in the rental unit have now advised him that they will not be vacating as they have not found a new place to live. The landlord stated that he has had to find interim housing for his family in Surrey and this has been very disruptive for their children's school and for their work as they no longer live in the area and have to commute back and forth each day.

The landlord stated that he is also to be vacating his temporary housing at the end of this week and he urgently needs possession of the rental unit.

The landlord commented that he had been to the property to pick up the April 2012 rent and spoken to the tenant's son and daughter as the tenant's do not speak English and this was when he was advised that the \$1600.00 April 2012 rent would not be paid as the tenants were entitled to the 1 months rent as compensation. The landlord stated that the tenants are now over-holding in the rental unit and the \$1600.00 May 2012 rent has not been paid.

The tenant's agent testified that the tenants had an agreement with the old landlord to stay in the rental unit for 2 or 3 years and should not have to move. The agent stated that the tenants have never met this new landlord and the old landlord should be in the hearing to say the tenants can stay. The agent commented on how the tenants did not understand that they would have to move. The agent stated that the tenants have not been able to find new housing as there are 9 people in the family.

Analysis

Section 49(8) of the Act states that **within 15 days of receiving** a 2 Month Notice to End Tenancy for Landlord's Use of Property a tenant must apply for dispute resolution. If the tenant fails to file to dispute the notice, then under section 49(9)(a)(b) of the *Act* they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Therefore I find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

In regards to the unpaid rent for April 2012, a tenant is entitled to withhold the last month's rent as compensation however as the tenants have refused to vacate the rental property the **April 2012 rent is due and payable and the tenant's entitled to withhold the May 2012 rent as the 1 month's compensation as they are over-holding the rental unit.**

It should also be noted that while the tenant's agent alluded to the fact that the tenant's did not understand that they had to vacate on the notice to end tenancy, the tenants were very aware of the fact that they were entitled to the 1 month's rent as compensation for the notice.

Residential Tenancy Act **Tenant's compensation: section 49 notice, 51** speaks to:

(1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Conclusion

I hereby grant the landlord an **Order of Possession**, effective **2 days** after service of the Order upon the tenant(s). This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$1600.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$1650.00**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: May 1, 2012

Residential Tenancy Branch