



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes: OPT / OPL

Introduction

This hearing was scheduled in response to the tenant's application for an order of possession. Both parties participated in the hearing and gave affirmed testimony.

The landlord stated that she had not been served with the tenant's application for dispute resolution or the notice of hearing, and that she became aware of the hearing as a result of her own inquiries. During the hearing the landlord confirmed that she seeks an order of possession.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this tenancy which began in 1999. Monthly rent of \$800.00 is due in advance on the first day of each month. Rent is paid by cheque made payable to the landlord. No security deposit was collected.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated March 19, 2012. The notice was served by posting on the tenant's door on that same date. Subsequently, the tenant filed an application for an order of possession on March 22, 2012. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is June 1, 2012. The reason shown on the notice for its issuance is as follows:

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 and her common-law partner, “WD” (tenant’s witness) have joint ownership of the unit. The tenant is the landlord’s ~~son~~ brother. The landlord seeks an order of possession so that their daughter can move into the unit, but “WD” objects. The tenant claims he was promised he could live in the unit indefinitely, and states that he has spent a considerable amount of money upgrading the unit over the years.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 12 of the Act provides that **Tenancy agreements include the standard terms:**

12 The standard terms are terms of every tenancy agreement

- (a) whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and
- (b) whether or not the tenancy agreement is in writing.

Section 2 of the Act speaks to **What this Act applies to:**

2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

Section 1 of the Act defines “**landlord**” in part, as follows:

“**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner’s agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Based on the documentary evidence and testimony, I find that a tenancy agreement exists between “BLH” and “JAH,” pursuant to which “BLH” is the landlord and “JAH” is the tenant.

Section 44 of the Act speaks to **How a tenancy ends**, in part as follows:

44(1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (v) section 49 [*landlord’s notice: landlord’s use of property*];

I find that pursuant to section 49 of the Act which addresses **Landlord’s notice: landlord’s use of property**, the landlord served the tenant with a 2 month notice to end tenancy for landlord’s use of property. As earlier stated, the reason identified by the landlord for issuance of the notice is that the unit will be occupied by a “close family member.” Section 49 of the Act defines “close family member” as follows:

49(1) In this section:

“**close family member**” means, in relation to an individual,

- (a) the individual’s father, mother, spouse or child, or
- (b) the father, mother or child of that individual’s spouse;

Residential Tenancy Policy Guideline # 2 addresses the “Good Faith Requirement when Ending a Tenancy,” and provides in part:

A claim of good faith requires honesty of intention, with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

I find that the landlord's honest intention for issuing the notice is so that her daughter (a close family member) can occupy the unit.

Section 55 of the Act addresses **Order of possession for the landlord**, in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As previously noted, after being served with the landlord's notice, the tenant applied for an order of possession, which I find was intended as an application to have the landlord's notice set aside.

Following from all of the above, I find that the landlord has established entitlement to an order of possession, and the tenant's application for an order of possession is hereby dismissed.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **June 1, 2012**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme 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: April 18, 2012.

Residential Tenancy Branch
