



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL and MNSD

Introduction

This hearing was convened on the landlords' application of August 2, 2012 seeking an Order of Possession in support of a Notice to End Tenancy for landlord use after the failed to vacate by the end of tenancy date set by the Notice. The landlords also sought authorization to retain the tenant's security deposit in partial satisfaction of unpaid rent.

Despite having been served with the Notice of Hearing served by posting on August 2, 2012, the tenant did not call in to the number provided to enable his participation in the telephone conference call hearing. Therefore, it proceeded in his absence.

As a matter of note, the first named landlord on this application is the purchaser and present owner of the rental building. The second named landlord is the vendor and former owner of the building. Only the present landlord attended.

At the commencement of the hearing, the attending landlord advised that, to all appearances, the tenant vacated the rental unit on or about August 2, 2012 although some of his property remained. However, the landlord requested the Order of Possession in order to ensure his legal right to enter the rental unit and change the locks.

As he was not certain that the security deposit had been passed to him, he withdrew the request for authorization to retain the security deposit in set off.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began on February 15, 2010. Rent is \$990 per month and the landlord holds a security deposit of \$475 paid on February 8, 2010.

During the hearing, the landlord gave evidence that the tenant had been served with a Notice to End Tenancy for landlord use on May 31, 2012 after conditions for a sale had been removed and he, as purchaser, had requested vacant possession as required by section 49(5) of the *Act*.

The notice set an end of tenancy date of July 31, 2012 to accommodate a possession date of August 1, 2012.

The landlord stated that the tenant had not fully vacated on July 31, 2012, had changed the locks on the rental unit without providing a key to the former landlord, and left some property in the rental unit. In addition, the tenant left owing two months' rent.

Therefore, the landlord requested the Order of Possession.

Analysis

Section 49(5) of the *Act* provides that a landlord may issue a two-month Notice to End Tenancy for landlord use in circumstances, among others, in which the rental building has been sold, conditions removed and the purchaser has requested vacant possession.

Section 49(8) and (9) of the *Act* permits a tenant receiving such notice to make application to contest it, and failure to do so results in the conclusive presumption that the tenant has accepted that the tenancy ends on the effective date of the notice.

I find as fact that the tenant was properly served and did not make application to contest the notice, and that the tenancy ended on July 31, 2012.

Therefore, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m on August 30, 2012.

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 at 1 p.m. on August 30, 2012.

The landlords remain at liberty to make application for any remaining or further damage or losses as may be ascertained when they have regained possession of the rental unit.

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: August 29, 2012.

Residential Tenancy Branch