



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for landlord's use of the property pursuant to sections 49 and 55 of the *Act*; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72; and
- other remedies, identified by the landlord as a request for an order of possession based on the tenant's refusal to abide by the terms of the grace period allowed to the tenant to comply with the terms of the notice to end tenancy issued to her.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) left on her doorstep for her by the landlord's agent (the agent) from the other side of her door on August 31, 2012. The tenant also confirmed that she was served with a copy of the landlord's dispute resolution hearing package posted on her door by the landlord's agent on December 18, 2012. I am satisfied that the above documents have been served to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of the property? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on February 1, 2012. Monthly rent is set at \$500.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$250.00 security deposit paid on February 1, 2012.

The tenant confirmed that she has not applied to have the 2 Month Notice cancelled. She said that she has been working with a local community resource centre to find alternate accommodations, but has been unsuccessful in finding anything suitable to date.

Analysis

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of her tenancy on November 1, 2012 and required her to vacate the rental premises by that date. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

At the hearing, the agent testified that he had accepted the tenant's monthly payment for January 2013 and was willing to allow the tenant to remain in the rental premises to enable her to find alternate accommodations until February 28, 2013. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on February 28, 2013, the landlord may enforce this Order in the Supreme Court of British Columbia.

Although no monetary issues were raised by either party regarding this tenancy, I remind both parties of the following provisions of section 51 of the *Act*, a provision which establishes the tenant's entitlement to a monetary award when a landlord ends a tenancy for landlord's use of the property under section 49 of the *Act*:

51 (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...

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement...

If arrangements have not already been made whereby the tenant was allowed a credit of one month's rent pursuant to section 51(1) of the *Act*, I order the landlord to make such arrangements for February 2013, the last month of this tenancy.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for his application.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on February 28, 2013. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary award in the landlord's favour in the amount of \$50.00 to enable the landlord to recover his filing fee for this application. To implement this monetary award, I order the landlord to retain \$50.00 from the tenant's security deposit held by the landlord for this tenancy. I order that the remaining value of the tenant's security deposit is now set at \$200.00.

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 17, 2013

Residential Tenancy Branch

