



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPL, OPB

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested an Order of possession based on a 2 Month Notice Ending tenancy for Landlord's Use. The landlord confirmed that they wished to end the tenancy for this reason only.

The tenant was present at the hearing; her 2 children were also present, but did not testify.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on an undisputed Notice issued ending the tenancy for landlord's use of the property, to complete renovations?

Background and Evidence

The tenancy commenced in 1994; the tenant originally rented the upper portion of a house but approximately 10 years ago she moved in to the lower unit. Rent is \$802.00 per month, due on the 1st day of each month.

The tenant confirmed that on December 31, 2012 she received a 2 Month Notice to End Tenancy for Landlord's Use, issued by the landlord on December 28, 2012. The Notice indicated that the unit must be vacated for the purpose of renovations; effective February 28, 2013.

The tenant confirmed that she did not dispute the Notice and provided several reasons:

- She thought agreement could be reached allowing her to rent the upper unit;
- She was leaving the country on January 10 2013 and was too busy to apply, disputing the Notice;

- She did not believe she needed to dispute the Notice as she had communicated with the landlord in relation to the upper unit and was waiting to hear from him; and
- That on February 6, 2013 she had been told by a Residential Tenancy Branch staff member that she did not need to counter the Notice as she could make submissions during the landlord's hearing.

The tenant confirmed that she had read the Notice and understood she had 15 days to dispute the Notice, but that she believed alternate arrangements could be reached with the landlord.

The landlord said that they had discussed the possibility of the tenant moving into the upper unit; it is bigger and rents for \$1,400.00 per month, plus utilities. No agreement has been signed with the tenant for rent of that unit.

The tenant has not vacated the unit and rent was paid for February 2013. The tenant thought that since her rent had been accepted her tenancy would continue; she understood she was to have been given that month free, as compensation.

The landlord said that they had cheques for rent and that the deposit was made for February rent. The landlord has asked his staff to ensure that March rent is not deposited; if it has been that rent will be returned and will form the tenant's compensation. The landlord agreed to allow the tenant to remain in the rental unit until the end of March.

Analysis

I find that the tenant was served with a 1 Month Notice to End Tenancy for Landlord's Use, on December 28, 2012. The tenant confirmed receipt of the Notice on December 31, 2012 and I find she was served effective that date.

Therefore, I find that the Notice was effective on February 28, 2013.

The arguments raised by the tenant failed to take into account the requirements of the legislation. The tenant received the Notice, knew she must submit an application disputing the Notice, but said she was too busy to do so. The tenant chose not to address the Notice within the required time-frame; a decision that resulted in the landlord's application requesting an Order of possession.

Section 49(8) and (9) provide:

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

***(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
(b) must vacate the rental unit by that date.***

(Emphasis added)

Therefore, as the tenant failed to submit an application to cancel the Notice, I find that the tenant accepted that the tenancy was to have ended on the effective date of the Notice, February 28, 2013.

As the effective date of the Notice has now passed, even if the tenant submitted an application requesting more time to dispute the Notice, section 66(3) of the Act prohibits an extension of time to apply when it is made beyond the effective date of a Notice.

The landlord has agreed to provide the tenant compensation that is due in accordance with section 51 of the Act; the tenant may remain in the rental unit until March 31, 2013 at 1 p.m.; no rent will be payable for this final month of the tenancy.

Therefore, based on section 49 of the Act and section 55(2) of the Act, I find that the landlord is entitled to an Order of possession that is effective **no later than 1 p.m. on March 31, 2013.**

The landlord has been granted an Order of possession that is effective at **1 p.m. on March 31, 2013.** This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

Conclusion

The landlord has been issued an Order of possession.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 04, 2013

Residential Tenancy Branch

