



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

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 section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

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 landlord gave evidence that he handed the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) to the tenant on January 31, 2013. The tenant confirmed that she received the 2 Month Notice from the landlord on that date. The tenant also confirmed that the landlord handed her a copy of the landlord's dispute resolution hearing package on March 8, 2013. I am satisfied that the landlord served the above documents 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 tenancy began as a one-year fixed term tenancy on February 1, 2008. At the expiration of the initial term, this converted to a periodic tenancy. Monthly rent for both levels of this two level rental home was set at \$2,700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,300.00 security deposit paid on or about February 1, 2008.

The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reasons for seeking an end to this tenancy:

- *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's 2 Month Notice identified an effective date of March 31, 2013, as the date when the landlord needed to take vacant possession of the rental home.

The parties testified that since the landlord applied for dispute resolution, they had agreed to an arrangement whereby the tenant could remain in the lower level of the rental home for the months of April and May 2013. The tenant gave undisputed sworn testimony that she had a written agreement with the landlord enabling her to remove her belongings from the upper level of this rental home and relocate to the lower level for a two-month period while she seeks alternate accommodation. The parties agreed that the tenant's new monthly rent for April and May 2013 is set at \$1,200.00. The tenants also agreed that the tenant has moved to the lower level of this home and has paid \$1,200.00 to the landlord for April 2013, in accordance with their new two-month agreement.

The parties also agreed that the tenant has not paid the final month of her rent for March 2013, the final month of her original tenancy agreement for the whole rental property. The tenant testified that she did not pay this final month of rent in accordance with the provisions of the *Act*. Since the last month of the original tenancy for the entire rental property ended on March 31, 2013, I advised the parties that the tenant has adhered to section 51(1.1) of the *Act* by withholding her rent for March 2013, after receiving the landlord's 2 Month Notice.

At the hearing, the landlord requested an Order of Possession, based on the extension of time that the landlord has given the tenant to vacate the premises, initially based on the 2 Month Notice.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle all issues currently under dispute arising out of this tenancy on the basis of the following final and binding settlement agreement:

1. Both parties agreed that the tenant will occupy only the lower level of the rental building during April and May 2013.

2. Both parties agreed that the tenant has paid \$1,200.00 for April 2013 and will pay \$1,200.00 on May 1, 2013, the final month of her tenancy in the lower level of the rental building.
3. Both parties agreed that the tenant remains in possession of the lower level of the rental building until 1:00 p.m. on May 31, 2013, by which time the tenant will have vacated the rental premises.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues currently under dispute between them.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by the time and date set out in their agreement. 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.

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 04, 2013

Residential Tenancy Branch