



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, MND, MNSD, FF

Introduction

The hearing was scheduled in response to an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, for a monetary Order for damage to the rental unit, to retain the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that she personally served the Tenant with the Application for Dispute Resolution and Notice of Hearing on April 04, 2013, in the presence of the Witness for the Landlord. The Witness for the Landlord, who is her former spouse, stated that she observed the Landlord serve the aforementioned documents on that date. I find these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Landlord stated that on April 11, 2013 she personally served the Tenant with copies of documents she wishes to rely upon as evidence, in the presence of the Witness for the Landlord. I find these documents have been served in accordance with section 88 of the *Act* and they were accepted as evidence for these proceedings.

The Landlord is seeking compensation, in the amount of \$240.00, for cleaning the rental unit and for repairing a variety of damages to the unit. Section 37(2) of the *Act* requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear when the rental unit is vacated. As this rental unit has not yet been vacated, I find the Tenant still has the right to repair any damage he caused to the rental unit and to clean the rental unit. I therefore find that the Landlord's claim for compensation for damage is premature and I dismiss that portion of her claim, with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution in which she seeks compensation for damage to the rental unit and/or to retain a portion of the security deposit once the rental unit is vacated.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and to retain any portion of the security deposit?

Background and Evidence

The Landlord stated that this tenancy began approximately two years ago; that the Tenant is required to pay rent of \$480.00 by the first day of each month; and that the Tenant paid a security deposit of \$240.00.

The Landlord stated that she personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on January 19, 2013. The Witness for the Landlord stated that she observed the Landlord serve the Notice on that date. The Notice declared that the Landlord was ending the tenancy because the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Notice declared that the Tenant must vacate the rental unit by April 01, 2013.

The Two Month Notice to End Tenancy declared that the Tenant must move out of the rental unit by the date set out on the front page of the Notice if he does not dispute the Notice within fifteen days of receiving it. I have no evidence that the Tenant disputed the Notice to End Tenancy.

Analysis

On the basis of the testimony of the Landlord and the Witness for the Landlord, I find that the Tenant received a Two Month Notice to End Tenancy on January 19, 2013, which declared that he must vacate the rental unit by April 01. 2013.

Section 49(2) of the *Act* stipulates that a Two Month Notice to End Tenancy for Landlord's Use of Property must end a periodic tenancy on a date that is not earlier than two months after the date the notice is received and the day before the day in the month that rent is payable under the tenancy agreement. As the rent is due by the first day of each month, the Notice to End Tenancy should have been dated either March 31, 2013 or April 30, 2013.

Section 53 of the *Act* stipulates that if the effective date stated in a notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy is April 30, 2013.

Section 49(9) of the *Act* stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 49 of the *Act* and that tenants must vacate the rental unit by the effective date of the notice unless the tenant disputes the notice within fifteen days of receiving it. As there is no evidence that the Tenant filed an application to dispute the Two Month Notice to End Tenancy, I find that the Tenant accepted that the tenancy is ending on the effective date April 30, 2013, pursuant to section 49(9) of the *Act*.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the \$50.00 fee she paid to file the Application. I authorize the Landlord to retain \$50.00 from the security deposit, as compensation for this fee.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on April 30, 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.

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 29, 2013

Residential Tenancy Branch

