



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Waterford Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession due to another use of the property by the landlord and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord provided documentary evidence that the tenant was served with their Application for Dispute Resolution and Notice of Hearing by registered mail on May 12, 2013. The landlord evidence included the receipt containing the tracking number of the registered mail.

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit and to recover the filing fee?

Background and Evidence

The landlord gave evidence that this tenancy began in 2009, monthly rent is \$536 and that the landlord holds a security deposit from the tenant in the amount of \$268.

The landlord gave evidence that they served the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"), on March 12, 2013, via registered mail, with an effective move-out date of May 31, 2013.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. The landlord said that additionally he gave the tenant a copy of the Notice 10 days later.

The Notice explained the tenant had fifteen days to dispute the Notice.

The landlord submitted that he did see the tenant move some of his personal property out of the rental unit and believed that he will be making a final move shortly.

The landlord also said that the tenant has been compensated the amount equal to two months' rent as the tenant did not pay rent in April or May.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I find that the tenant was properly served a 2 Month Notice to End Tenancy for Landlord's Use of the Property and did not apply to dispute the Notice. Therefore pursuant to section 49(9) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, in this case May 31, 2013, and must move out of the rental unit.

I therefore find that the landlord is entitled to an order of possession for the rental unit effective two days after service of the order upon the tenant. I have not granted the landlord an order of possession for the rental unit for the effective date of the Notice as that date has now passed.

The landlord is authorized to deduct the filing fee of \$50 from the tenant's security deposit, as agreed to by the landlord.

Conclusion

I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement may be recoverable from the tenant.

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* and is being mailed to both the applicant and the respondent.

Dated: June 05, 2013

Residential Tenancy Branch

