



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, 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 for the rental unit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

No party raised any issue regarding service of the evidence or application.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their 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 Dispute Resolution 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

I heard undisputed testimony that the tenancy started on November 1, 2010 and monthly rent is \$1100.

The landlord's application requests an order of possession for the rental unit based upon the tenants' written notice of June 30, 2013 that they were vacating the rental unit on August 1. The landlord submitted this document, showing the tenant's signature and date.

The landlord said that despite the written notice, the tenants have not vacated the rental unit and that he has now re-rented the rental unit, with the new tenants waiting to move in.

In response, the tenant said that he verbally cancelled his notice to vacate on July 16, 2013, and understood from the attending landlord that he would be able to stay in the rental unit.

The tenant said that by the landlord's continued withdrawing rent from his account, he believed he was entitled to stay.

In response, the landlord denied ever telling the tenant his request to cancel his written notice had been agreed upon by his head office, and that the landlord continued to collect rent as the tenant never vacated.

The landlord said that receipts for the rent payments were written, with the term that the payment was on a use and occupancy only basis.

Analysis

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

Section 44(1)(a) of the Act states that one way a tenancy can end is when the tenant issues a notice to the landlord, per section 45 of the Act, and section 55 of the Act states that a landlord is entitled to an order of possession for the rental unit if there has been such a notice by the tenant.

In the case before me, I find the landlord submitted sufficient evidence that the tenant gave written notice that they were ending the tenancy on August 1, 2013, that the landlord relied upon this written notice to re-rent the rental unit and are therefore entitled to an order of possession for the rental unit.

I therefore grant the landlord an order of possession for the rental unit effective at 1:00 p.m. on September 30, 2013, pursuant to the landlord's agreement to extend the

tenancy to the end of September 2013 and for the fact the tenants have paid rent for September.

This final, legally binding order of possession is enclosed with the landlord's Decision and must be served on the tenant.

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.

I grant the landlord recovery of the filing fee of \$50.

Conclusion

The landlord's application is granted and they are granted an order of possession for the rental unit, effective at 1:00 p.m. on September 30, 2013.

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: September 12, 2013

Residential Tenancy Branch

