



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Brown Bors. Agencies Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause and to recover the fee for filing an Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Agent for the Landlord stated that on, or about, January 27, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were delivered to the social worker at the hospital. The social worker stated that she did receive these documents from the Landlord and that she gave them to the Tenant, although she cannot recall the date she received those documents. The Tenant was in possession of those documents at the hearing.

Preliminary Matter

The Agent for the Landlord made a concerted effort to settle this matter by mutual consent. On the basis of the vague and sometimes confused testimony of the Tenant, I am not satisfied that she clearly understood the settlement agreement that was being proposed by the Landlord. My concern about her ability to understand the nature of the proposed settlement agreement was further influenced by the Tenant's testimony that she is currently hospitalized because she had a stroke, although she cannot recall when she was hospitalized. As I am not satisfied that the Tenant truly understood the terms of the settlement agreement being proposed, I find that it would be inappropriate to settle this matter in accordance with section 63 of the *Residential Tenancy Act* (Act).

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession?

Background and Evidence:

The Agent for the Landlord stated that this tenancy began on October 01, 2011 and that the Tenant is currently required to pay monthly rent of \$985.00. The Tenant is not certain of when the tenancy began or of how much rent she is required to pay, but she believes the information provided by the Agent for the Landlord is correct.

The Agent for the Landlord stated that a One Month Notice to End Tenancy, which declared that the Tenant must vacate the rental unit by December 31, 2013, was posted on the door of the rental unit on November 18, 2013. He stated that about one week after the Notice was posted he went to the rental unit with another agent for the Landlord and advised the Tenant that the Landlord would not be seeking an Order of Possession for the rental unit, providing the Landlord's son did not visit or live in the rental unit.

The Tenant initially stated that she did not receive the Notice to End Tenancy that was posted on November 18, 2013, as she was in the hospital at that time. She subsequently stated that she recalls an agent for the Landlord coming to her rental unit before she was hospitalized and telling her that they would not require her to move out if her son did not visit or live in the rental unit. She stated that she understood that the Landlord would end her tenancy if her son lived in, or visited, her rental unit.

The Agent for the Landlord stated that after their conversation the Tenant's son did vacate the rental unit for a period of time but that he returned to the rental unit sometime after the Tenant was hospitalized. On January 24, 2014 the Landlord filed an Application for Dispute Resolution seeking an Order of Possession, as the Tenant's son had returned to the rental unit.

Analysis

On the basis of the testimony of the Agent for the Landlord, I find that a One Month Notice to End Tenancy for Cause was posted at the rental unit on November 18, 2013. On the basis of the undisputed testimony that the Tenant and the Agent for the Landlord discussed the Landlord's attempt to end the tenancy prior to the Tenant being hospitalized, I find that the Tenant did receive that Notice before she was hospitalized.

On the basis of the undisputed testimony, I find that the Tenant was again served with the Notice to End Tenancy when she was served with documents for this hearing. Although the parties are not certain of when those documents were received by the Tenant, I find it reasonable to conclude that the Notice was received, for a second time, in late January or early February of 2014.

Section 47(5) 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 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it. As there is no evidence

that the Tenant ever filed an application to dispute the Notice to End Tenancy, I find that the Tenant accepted that the tenancy was ending on the effective date of the Notice to End Tenancy, pursuant to section 47(5) of the *Act*.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

In the event the parties can reach an agreement to continue this tenancy, the Landlord may elect not to enforce this Order of Possession. An agreement to continue this tenancy may include an agreement that the Tenant's son must not visit the rental unit; that the Tenant's son must surrender his key(s) to the residential complex; or any other terms the parties deem appropriate.

The Landlord has established a monetary claim, in the amount of \$50.00, in compensation for the fee paid by the Landlord for filing this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$50.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court 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: March 10, 2014

Residential Tenancy Branch

