



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction and Preliminary and Procedural Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied an order of possession due to another use of the property by the landlord, pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

The landlord's application, although filed on October 21, 2014, was set for hearing the following week. The landlord submitted that he served the tenant his application, which included a copy of the Notice, the notice of this hearing and his evidence on October 21, 2014, at 6:00 p.m. The landlord did not deliver his separate documentary evidence to the Residential Tenancy Branch ("RTB") until October 27, 2014.

The tenant confirmed receipt of the documents, although the manner in which they were delivered was questionable, according to the tenant.

The tenant requested an adjournment of the hearing, due to the early setting for this hearing, because she had not had adequate time to prepare and submit all evidence that was available. The tenant submitted further that she had made numerous attempts to telefax her responsive documentary evidence to the RTB, before finally meeting with success. The landlord confirmed receipt of the tenant's evidence.

The hearing on the merits of the landlord's application continued on the provisional basis that an adjournment would still be considered prior to making a Decision on the landlord's application, with both parties providing testimony. The parties were informed that an oral Decision would not be rendered at the hearing, and that I would issue a written Decision sometime after the hearing, either granting the tenant's request for an adjournment and rescheduling the hearing, or issuing a Decision on the landlord's application.

In considering whether or not to grant the tenant's request for an adjournment, Section 6.3 of the Dispute Resolution Rules of Procedure (Rules) gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time at the request of either party or of the Arbitrator's own initiative.

Under Section 6.4 (b) I considered whether or not the purpose for which the adjournment is sought will contribute to ensure a fair, efficient and consistent process for resolving this dispute.

After having heard from the parties, both for and against an adjournment, I find that to continue with the proceeding would not unduly prejudice the rights of the tenant in this matter, as will be more fully explained in this Decision.

As to the landlord's additional documentary evidence, I have excluded the same from consideration, as he did not serve the RTB in a timely manner; however, I have considered the documentary evidence attached with his application.

I have reviewed all oral and documentary evidence before me that met the requirements of the Rules of Procedure; 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?

Background and Evidence

The evidence provided shows a history between the parties, as the tenant sold the landlord her prior home, and the tenant moved into the landlord's former home at the time of the sale, with a second mortgage given to the tenant, as mortgage holder, in the amount of \$200,000. Documents entered into evidence by the tenant shows by virtue of the real estate transaction, the tenant was given exclusive use of the landlord's former home, the rental unit here, rent free, and that if the landlord paid the balance of \$200,000 between the time of October 1, 2013, and April 1, 2014, the tenant would begin paying monthly rent of \$3000 to the landlord.

Both parties agreed that the landlord did pay the \$200,000 sometime in February 2014, and that the tenant began paying rent. Both parties confirmed that a verbal agreement was reached that the monthly rent of the tenant was reduced to \$2200, at least by March 2014. Both parties confirmed that a tenancy existed between the parties.

The landlord gave evidence that he served the tenant a 2 Month Notice to End Tenancy for Landlord's Use of the Property, on August 15, 2014, by leaving it with the tenant. The effective vacancy date listed on the Notice was October 31, 2014, and the reason listed for issuing the Notice was that the landlord intended on occupying the rental unit.

The Notice explained that the tenant had fifteen (15) days from receipt of the Notice to file an application for dispute resolution at the Residential Tenancy Branch in dispute of the Notice. It also explains that if the tenant did not file an application to dispute the Notice within fifteen days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice, in this case, October 31, 2014.

The landlord submitted that he did not have any reason to believe the tenant would not move out by the effective date, until he received an email from her on October 17, 2014. The landlord submitted further that he required the order of possession as he has sold his present home, would be moving into this residential property, and that the movers were booked to move their personal property on November 1, 2014.

The tenant confirmed that she received the Notice on or about the date mentioned by the landlord and that she has not filed an application for dispute resolution to dispute the Notice. The tenant submitted further that it would not be possible to move out of the rental unit as all her personal property remained there, she had no place to go or move to temporarily as she was waiting for final approval to move to another country, and that she was attempting to re-home her dog.

The tenant requested an additional two weeks in order to fully move out.

Analysis

Based on the oral and written evidence, I find the landlord submitted sufficient evidence to substantiate that the tenant was served a 2 Month Notice to End Tenancy for Landlord's Use of the Property and the tenant did not file an application for dispute resolution in dispute of the Notice within fifteen days, or at all. I therefore find the tenant is conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case October 31, 2014, and must move out of the rental unit.

I find that the landlord is entitled to an order of possession for the rental unit effective on October 31, 2014, the date listed on the Notice.

I additionally find that there could be no additional evidence from the tenant that would cause me to alter the outcome of this Decision, based upon an undisputed Notice.

Conclusion

The landlord's application is granted. As such, 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 after it has been served upon her, 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*.

Dated: October 30, 2014

Residential Tenancy Branch

