



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) to enforce the tenant's notice to end tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

Preliminary Issue: Parties to this Hearing

The landlord testified that he served the tenant with the Notice of Dispute Resolution and hearing package on November 6, 2014 by handing it to the tenant personally. He has included both tenant SJ and tenant KK in his application. However, tenant KK (the subtenant) is not a signatory to the tenancy agreement. The landlord withdrew his application with respect to tenant KK.

Issues to be Decided

Has the tenant given notice to end tenancy, pursuant to section 52 of the *Act*? Is the landlord entitled to an Order of Possession?

Background and Evidence

This month to month tenancy began November 1, 2013 with a rental amount of \$1,300.00 payable on the first of each month. The landlord holds a \$650.00 security deposit paid November 1, 2013.

The landlord claims that the tenant submitted a notice to end tenancy on September 28, 2014 via email. The landlord testified that he relied on the tenant's notice and re-rented the rental unit for December 1, 2014. The tenant testified that she had 'hoped' to end the tenancy on October 31, 2014 however she had been unable to secure new housing. The tenant and her subtenant are still residing in the rental unit.

The landlord submitted documentary evidence of email correspondence regarding move-out by the tenant. He also provided a copy of the tenancy agreement between himself and the new tenant SJ.

Analysis

The landlord's application is premature. There has been no notice to end tenancy provided by the tenant. Section 52 of the *Act* states that, in order to be effective, a notice to end tenancy must be in writing and must;

- (a) Be signed and dated by the landlord or tenant giving notice,
- (b) Give the address of the rental unit,
- (c) State the effective date of the notice,
- (d) Except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) When given by a landlord, be in the approved form.

The tenant, to vacate the premises must give notice to end tenancy;

- On a date not earlier than one month after the date the landlord receives the notice, and
- Is the day before the day in the month, or in the period on which the tenancy is based, that rent is payable under the tenancy agreement.
- That complies with section 52 [form and content of notice to end tenancy]

To end tenancy, the landlord is required to serve a Notice to End Tenancy in the approved form, pursuant to the *Residential Tenancy Act*.

Notice has not been provided by either party to this tenancy. The tenant has not given notice that meets the requirements of the *Act*. The notice does not provide the address of the rental unit and it is not in 'writing'. Most importantly, the notice does not state an effective date to the end of the tenancy. To enter or end a tenancy agreement, there must be a meeting of the minds; there must be an agreement between parties or there must be a breach of a material term of the tenancy.

Despite the obstacles to proceeding with a hearing and pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The landlord and tenant agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The tenant agreed to vacate the rental unit on or before December 1, 2014 at 12:00 p.m.
2. The landlord agreed to return the government-prepared rental cheque to the tenant for rent for December 2014

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties, I issue the attached Order of Possession to be used by the landlord **only** if the tenant does not abide by the terms of the settlement agreement as outlined above by December 1, 2014. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

To implement this settlement, I order the landlord to return the government-prepared rental cheque to the tenant for rent for December 2014.

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: December 1, 2014

Residential Tenancy Branch

