



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for landlord's use pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 0951 in order to enable the tenants to connect with this teleconference hearing scheduled for 0930. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenants with the dispute resolution package on 21 December 2014 by registered mail. The landlord provided me with Canada Post customer receipts that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

The landlord testified that he served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) on 28 November 2014 by leaving the notice with the tenant AG. On the basis of this evidence, I am satisfied that the tenants were served with the 10 Day Notice pursuant to sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for landlord's use? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began on or about 1 July 2014. The tenancy was for an initial six-month, fixed-term tenancy to be followed by a month-to-month tenancy. Monthly rent of \$1,380.00 is due on the first. The landlord testified that he continues to hold the tenants' security deposit of \$690.00 that was collected at the beginning of the tenancy.

On 28 November 2014, the landlord served the 2 Month Notice to the tenants. The 2 Month Notice was dated 28 November 2014 and set out an effective date of 1 February 2015. The 2 Month Notice set out that it was being given as the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord testified that his mother has a heart condition that requires that she not live alone. The landlord testified that it is his intent to occupy the rental unit with his family, that is, the landlord, his spouse, his two children, and his mother. The landlord testified that his current home is too small to house all of his family. The landlord testified that the only reason he issued the 2 Month Notice was so that he could use the rental unit with his family.

By email, the tenants told the landlord that they would not be vacating the rental unit. The landlord made this application in response to the tenants' statement.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

The tenants have not applied to cancel the 2 Month Notice, accordingly and pursuant to subsection 49(9), the tenants are presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, this requires the tenants to vacate the property by 1 February 2015. The landlord is entitled to an order of possession for this date.

As the landlord has been successful in his application he is entitled to recover his filing fee from the tenants. The landlord testified that he continued to hold the tenants' \$690.00 security deposit, plus interest, paid in 2014. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary award.

Conclusion

I order the landlord to recover the \$50.00 filing fee from the tenant by allowing the landlord to retain \$50.00 from the security deposit for this tenancy. I order that the value of the security deposit for this tenancy is reduced from \$690.00 to \$640.00.

The landlord is provided with a formal copy of an order of possession effective by one o'clock in the afternoon on 1 February 2015. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 19, 2015

Residential Tenancy Branch

