



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on November 17, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on January 27, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the landlord is entitled to an Order for Possession pursuant to a one month Notice to End Tenancy dated November 17, 2014 and setting the end of tenancy for December 31, 2014?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2012. The present rent is \$750 per month payable on the first day of each month. The tenant paid a security deposit of \$375 on November 21, 2012.

The tenant continues to live in the rental unit and has paid he rent for February. The rent was accepted by the landlord “for use and occupation only.” The tenant has not filed an application to cancel the one month Notice to End Tenancy and the time to do so has expired.

Section 47(5) of the Residential Tenancy Act provides as follows:

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), 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.

Policy Guideline #36 includes the following statement:

“Notice to End

Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances***. In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.”

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Accordingly, I granted the landlord an Order for Possession. I set the effective date of the Order for Possession for February 28, 2015 as the rent was paid for February and accepted by the landlord for “use and occupation only.”

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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: February 12, 2015

Residential Tenancy Branch

