



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, OLC, ERP, PSF, RPP, LRE, AAT, RR

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord SW (Applicant) identified Tenant GD as the Respondent in her application for:

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

The tenant identified both landlords in his application for;

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs, or emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to

present sworn testimony, and to make submissions. One witness testified on behalf of the landlord. Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant's participation in this hearing, I order his application dismissed without liberty to reapply.

The landlord's witness testified that he served the tenant's girlfriend with 2 Month Notice to End Tenancy by handing the notice to her at the rental unit on February 28, 2015. Both the landlord and the landlord's witness testified that the tenant's girlfriend also resides in the rental unit. Pursuant to section 88(e) of the *Act* and based on the sworn testimony of the landlord's witness, I find the tenant deemed served with the 2 Month Notice on February 28, 2015.

The landlord's witness testified that, on March 5, 2015, the tenant attended to the landlord's door. The landlord's witness testified that he answered the door and handed the landlord's application for dispute resolution and the Notice of Hearing directly to the tenant. Based on the undisputed sworn testimony provided at this hearing and in accordance with sections 89 of the *Act*, I find that the landlord's dispute resolution hearing package was deemed served to the tenant on March 5, 2015.

Issues 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 tenant?

Background and Evidence

The landlord gave evidence that the original lease for the premises began in November 2014. This month to month rental was based on an oral agreement with a set rental amount of \$750.00 payable on the first of each month. The landlord testified that she continued to hold the \$200.00 security deposit that the tenant paid on or about December 1, 2014.

The landlord has applied for an Order of Possession for landlord's use of the property. She testified that her ex-husband will be moving into the rental unit. The ex-husband

was present at the hearing to confirm this testimony. The landlord testified that the tenant was homeless prior to this tenancy and she had attempted to accommodate them in many ways. She also testified that she had tried to assist the tenant in relocating during the past two months.

The landlord issued a 2 Month Notice for Landlord's Use of Property. The landlord testified that the tenant advised her that he would vacate before February 28, 2015, the effective date of the 2 Month Notice. The landlord testified that the tenant and his girlfriend are still residing in the rental unit.

Analysis

Based on the sworn and undisputed testimony of both the landlord and her witness, the tenant was served with a 2 Month Notice on December 28, 2014. The landlord gave notice to end tenancy for landlord's use in accordance with the *Act*. I accept the landlord's testimony that her ex-husband will reside in the rental unit. I find that the landlord's ex-husband satisfies section 49(1) of the *Act* with respect to the definition of a close family member. Pursuant to section 49(8) of the *Residential Tenancy Act*, the tenant may dispute this notice within 15 days of receipt of the notice. The *Act* states,

49 (9) 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 tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days led to the end of his tenancy on February 28, 2015 and required him to vacate the rental premises by that date. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

Based on his non-attendance at this hearing, the tenant's application is dismissed.

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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: April 07, 2015

Residential Tenancy Branch

