



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLEWOOD GARDEN APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, O

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession because the tenants have breached an agreement with the landlord and other issues.

Two of the tenants and an agent for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenants confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Have the tenants breached an agreement with the landlord and if so is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this month to month tenancy started in 1975. No written tenancy agreement was available but the parties agreed an agreement was in place at the start

of the tenancy with the ex-manager of the building. Rent for this unit is now \$1,124.00 per month due on the first of each month.

The landlord's agent testified that the tenant AC gave the landlord written notice to end tenancy on April 06, 2015. This Notice stated that the tenancy will end on May 31, 2015. The landlord rented the unit to new tenants starting June 01, 2015; however, these tenants failed to vacate the rental unit as agreed in their notice and the new tenants were unable to move into the unit.

The tenants asked the landlord's agent for an extension of time to vacate the unit. The landlord's agent spoke to the owners of the unit and they decided not to extend the tenancy as the unit had already been re-rented.

The landlord's agent testified that the tenants are now considered to be overholding in the unit and in breach of their notice to vacate the unit. The tenants did pay rent for June and July and this was accepted by the landlord's agent for use and occupancy of the unit. The landlord's agent seeks an Order of Possession effective for July 31, 2015.

The tenant AC agreed she had given the landlord written notice to end the tenancy. The tenants testified that the other tenant is in the hospital and is unlikely to return to the unit. The tenants testified that the unit has not been re-rented to new tenants and they wanted to stay in the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. S. 45 (1) of the *Act* states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenant AC did give notice to end the tenancy. When one tenant gives notice this effectively ends the tenancy for all the tenants unless the landlord chooses to enter into a new tenancy agreement with the remaining tenants. In this matter it was the female tenant who gave the notice and this notice was accepted by the landlord. Therefore the tenancy must end on the effective date of that notice which in this case was May 31, 2015.

A tenant is not entitled to rescind the notice after it has been accepted by the landlord unless the landlord consents to allow the tenancy to continue. In this matter the tenants did ask for an extension of time and the landlords refused to consider this and expected the tenants to vacate the unit by May 31, 2015.

It is not relevant whether or not the unit had been re-rented what is relevant is that the tenants have overheld at the unit for June and July after the effective date that the tenancy should have ended. The landlord has accepted rent for these months for use and occupancy only and by doing so has not reinstated the tenancy. I therefore find the tenants have breached their agreement to end the tenancy on May 31, 2015 and continue to overhold in the rental unit.

The landlord has therefore established a claim for an Order of Possession pursuant to s. 55 of the *Act*. The landlord has agreed to allow the tenants to vacate the unit on July 31, 2015 and seeks an Order of Possession effective on that date.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1.00 p.m. on July 31, 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 20, 2015

Residential Tenancy Branch

