



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This was an application by a landlord for an order for possession pursuant to a landlord use two month Notice to End the Tenancy dated July 9, 2015 with an effective date of September 30, 2015. Both parties attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

Background and Evidence

Service of the Application was admitted. The tenant admitted receiving the Notice to End the tenancy which the landlord testified was served on July 9, 2015 by handing it to the tenant.

The landlord testified that he entered into the tenancy agreement with the tenant, collected the rent and was the only person that the tenant ever dealt with. He testified that his son intends to move into the unit as soon as possible.

The tenant testified that she searched the title of the property and the applicant is not the owner on title and does not have any sons and that therefore the Notice is defective. She requested an adjournment to obtain copy of the title search. The tenant wished to be permitted to remain in the unit and the tenancy to continue.

Analysis

The definition of a landlord is found in section 1 of the Residential Tenancy Act as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent **or another person** who, on behalf of the landlord,
 - (i) **permits occupation of the rental unit under a tenancy agreement, or**

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement
(my emphasis added)

I accept the applicant's evidence that it is only he who entered into the tenancy agreement with the tenant, collected the rent, and made repairs to the unit, and is the only person that the tenant ever dealt with. I therefore find that pursuant to the definition found in the Act the applicant is the landlord.

The landlord relied upon section 49 (3) of the Act in the Notice:

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant did not dispute the notice in accordance with section 49(8) of the Act:

49 (8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

Instead the tenant claims that the Notice is defective because the applicant is not the owner or landlord and does not have any children. I have already found that the applicant is indeed the landlord. In addition, for the tenant to challenge the Notice she must dispute it in accordance with section 49 (8) of the Act. If a tenant fails to dispute the Notice she is conclusively presumed to have accepted that the tenancy has ended on the effective date pursuant to section 49 (9) of the Act.

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.

(my emphasis added)

The tenant's claim that the Notice is defective requires scrutiny of the merits of the Notice, which cannot be done unless the tenant disputes the Notice. I find, as the tenant did not dispute the Notice that she is conclusively presumed to have accepted that the tenancy has ended as of September 30, 2015, the effective date of the Notice.

Notwithstanding that I have found that the applicant is the landlord in accordance with the Act, and that a title search is therefore not relevant, I cannot grant the tenant an adjournment to gather more evidence to seek to accomplish indirectly what she must have done directly by disputing the notice. Furthermore I cannot make any enquiries as

to whether the landlord intends to accomplish the purpose for which the Notice was issued.

I find that pursuant to section 49(9)(b) of the Act that the tenant must vacate the unit by the effective date of September 30, 2015.

Conclusion

I have granted the landlord an Order for Possession effective two days after service on the tenant. If the tenant does not comply the landlord may execute the Order in the Supreme Court of BC. The parties are cautioned to deal with the security deposit in accordance with section 38 of the Act.

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: October 19, 2015

Residential Tenancy Branch

