



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, MNDC, MNR, MT, RR, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

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

Tenant AC applied for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("the 2 Month Notice") pursuant to section 66;
- cancellation of the landlord's 2 Month Notice to End Tenancy pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to reduce the rent for repairs made pursuant to section 65;
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

I note that the tenant's application was adjourned from the original hearing date of December 23, 2015 to be heard together with the landlord's application on December 30, 2015 at 1:30 p.m. On December 23, 2015, both parties agreed to the adjournment to the new date and time. The tenant's application to cancel the landlord's notice to end tenancy and her attendance on the previous date provides evidence of her awareness of the landlord's application for an Order of Possession and this hearing date and time.

Neither tenants attended this hearing although the 1:30 pm teleconference continued until 1:43 pm. Landlord JG attended and was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 2 Month Notice to End Tenancy for Landlord's Use was served to the tenants on

September 23, 2015 in person. In all of the circumstances, I am satisfied that the tenant was sufficiently served with the 2 Month Notice to End Tenancy for Landlord's Use. Based on the testimony of the landlord and the notation in the interim decision that the tenant was present on the previous hearing date, I find that the tenant was sufficiently served with the landlord's Application for Dispute Resolution as well as having sufficient notice of this hearing.

With respect to the tenants failure to attend this hearing, 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 tenants' participation in this hearing to support their application and given the sworn evidence provided by the landlord, **I order the tenants' application dismissed without liberty to reapply.**

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

The landlord gave undisputed sworn testimony and documentary evidence that he served a 2 Month Notice to End Tenancy for Landlord's Use on September 23, 2015. The 2 Month Notice indicated the reason to end the tenancy; that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. To support his application for an Order of Possession, the landlord submitted a copy of an Application for a Demolition Permit; email correspondence with the City to whom the landlord applied indicating that the acquisition of the residential premises by the City had been approved and that it was required to be vacant; an indication from the City on an Application for Demolition that the application had been approved and providing the permit number.

The landlord has applied for an Order of Possession for landlord's use, for demolition of the property with the appropriate permits. The landlord testified that the tenants were notified of his Application to the City for a Demolition Permit; the approval of his permit

and that the tenants were provided with a copy of the email correspondence confirming the requirement for vacant possession of the residential property.

The landlord testified that, after issuing the 2 Month Notice to End Tenancy, he made several attempts to speak with the tenants about ending the tenancy. He testified that the tenants closed the door on him and would not respond to his calls. He testified that the tenants are now destroying the rental unit. The landlord testified that Tenant AC attended the previous hearing. He testified that she was aware of this hearing date.

The landlord provided testimony, under oath, that he had received a demolition permit for the residential premises and the City that issued that permit requires the premises to be vacant.

Analysis

The tenant made an application to cancel the landlord's 2 Month Notice to End Tenancy on October 15, 2015. This 2 Month Notice was served on September 23, 2015. I find that the tenant did not make her application within the required timeline pursuant to section 49(8) of the *Act* (within fifteen days of receiving the 2 Month Notice to End Tenancy). The tenant also did not attend this hearing to support her own application or to dispute the landlord's application for an Order of Possession.

In accordance with section 49(9) of the *Act*, the tenant's failure to either dispute this notice within fifteen days led to the end of her tenancy on November 30, 2015 and required her 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 has been successful in his application, I find he is entitled to recover the \$50.00 filing fee for this application from the tenant.

Conclusion

The tenant's entire application is dismissed without liberty to reapply.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords in the amount of \$50.00 for the filing fee for this application.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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: December 31, 2015

Residential Tenancy Branch

