



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for a mutual agreement to end tenancy pursuant to section 55.

The tenant did not attend this hearing, although I waited until 9:48 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he served the tenant with his Application for Dispute Resolution package by registered mail on February 18, 2016. He submitted Canada Post tracking information to prove that the tenant received the landlord's package. I find that the tenant was deemed served with the landlord's Application for Dispute Resolution on February 23, 2016 in accordance with section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord testified that this tenancy began on January 11, 2015 as a fixed term tenancy with a rental amount of \$1012.05 payable on the first of each month. He submitted a copy of the residential tenancy agreement indicating that this tenancy is to come to an end on June 30, 2016 and stipulates that the tenant must move out at the end of the tenancy. The landlord testified that he continues to hold a \$487.50 security deposit paid by the tenant on February 27, 2016. The landlord applied for a pre-emptive order of possession to ensure that the tenant vacates the rental unit at the end of this eight month tenancy.

The landlord relied on a “mutual agreement to end tenancy” in his application however at the hearing, he stated that he relied on the terms of the fixed term residential tenancy agreement to obtain an order of possession.

The landlord testified that the main reason he wants to ensure that this tenancy comes to an end and that the tenant vacates the rental unit is that she has an excessive amount of belongings, materials and refuse in her rental unit. The landlord testified that he wants to ensure she is aware of the end of her tenancy so that she can have an opportunity to access resources in relocating the tenant and all of her belongings.

The landlord submitted that the fixed term tenancy is a mutual agreement to end the tenancy on the date provided within the residential tenancy agreement.

Analysis

A landlord may apply for an Order of Possession in a variety of circumstances. Section 55(2) provides the different grounds that a landlord may rely on to end a tenancy.

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order....

In this case, the landlord relies on section 55(2)(c) in his reasoning and submits that the tenant would have known, from the substance of his application, their prior communications and the nature of the tenancy agreement that the landlord relies on this

section to end the tenancy and receive an order of possession, despite the reference in his formal application to a “mutual agreement to end tenancy” that requires a particular format and the written consent of both parties.

I note that there is no particular section in the Dispute Resolution Application form that provides for a landlord to apply for an Order of Possession at the end of a fixed term tenancy. I find, given that the landlord has provided clear evidence of the fixed term tenancy in this matter as well as evidence of his notice to the tenant that he will not continue the tenancy after the end of the term, in these circumstances, specific to the landlord’s reliance on the communication between the parties and the clear provision of a fixed term tenancy agreement, that the landlord is entitled to an order of possession for the date that the fixed term tenancy will end. I accept the landlord’s submission that, in these particular circumstances, the fixed term tenancy agreement can be considered a mutual agreement to end tenancy.

Conclusion

I grant the landlord a formal copy of an Order of Possession effective June 30, 2016. 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: April 18, 2016

Residential Tenancy Branch