



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 750 PEMBERTON DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: OPL, FF

Introduction

This matter was heard by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on April 1, 2016 for an Order of Possession for the Landlord's use of the property and to recover the filing fee from the Tenant.

An agent for the Landlord, the owner of the rental unit, the Tenant and the Tenant's legal advocate appeared for the hearing. The owner and the Tenant provided affirmed testimony and the Tenant's legal advocate made submissions on behalf of the Tenant.

The Tenant confirmed personal receipt of the Landlord's Application and both parties confirmed receipt of each other's documentary evidence prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

When the parties had finished providing their evidence in relation to the notice to end tenancy for the Landlord's use of the property, I offered the parties an opportunity to resolve this dispute by mutual agreement. As a result, the Tenant requested more time to vacate the rental unit but the Landlord was not willing to go beyond a date of May 31, 2016.

The Tenant then offered some terms and conditions to settle the Landlord's Application. However, during these negotiations, the Tenant fell ill and left the hearing. The Tenant was given some time to return to the hearing to continue the negotiations but was unable to do so. The Tenant's legal advocate requested an adjournment to allow the negotiations to continue. However, I informed the Tenant's legal advocate that I would not delay a decision in this matter as the evidence on the Landlord's Application had already been provided. Furthermore, I find the matter should not be delayed for the sole

purpose of allowing more time for the parties to negotiate an agreement as settlement is not a mandatory requirement of the Act.

However, I provided an opportunity for the Tenant's legal advocate to continue the negotiations on behalf of the Tenant which she did. However, despite extensive conversations and efforts between the parties, the owner was not willing to agree on any terms and conditions regarding the ending of the tenancy. Therefore, I am only able to make findings on the evidence that was presented before me in this case as detailed below. While I have considered all the evidence provided by the parties in this case, I have only documented that evidence which I relied upon to making findings in this decision.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for Landlord's use of the property?

Background and Evidence

The parties agreed that this tenancy started in March 2008 and the current company Landlord took over the tenancy in September 2015. Rent under this tenancy is currently payable by the Tenant in the amount of \$940.00 of which the Tenant's rent contribution is \$290.00. Rent is payable on the first day of each month and the parties confirmed that the Tenant is not in any rental arrears. The Landlord retains a \$395.00 security deposit which was paid by the Tenant at the start of the tenancy on February 13, 2008.

The owner testified that on September 24, 2015 she personally served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice"). The Notice was provided into evidence and shows a vacancy date of March 31, 2016. The reason indicated on the Notice to end the tenancy was because the "A family co-corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares". The owner testified that her son was going to be moving into the rental unit and that she had communicated this to the Tenant verbally prior to issuing the Notice.

The Tenant confirmed receipt of the Notice and testified that she did not dispute the reason on the Notice and did not apply to dispute the Notice. The Tenant explained that when the owner took over the rental unit and apprised her of their intention to conduct maintenance and renovation work, she knew this would exacerbate and affect her medical conditions as she has extreme environmental sensitivities. The Tenant testified

that she had informed the Landlord that she wanted to move out of the rental unit as soon as possible and this is the reason why she accepted the Notice.

The Tenant also confirmed that she understood that the owner's son was going to be moving into the rental unit and did not dispute this. The Tenant referred to a time line of events she had submitted prior to this hearing which showed extensive efforts the Tenant had been making to find alternative and suitable accommodation which was still on going at the time of this hearing. This was the reason why she has not moved out. The Tenant explained that despite the move out date on the Notice, she was under the impression that the Landlord was going to wait until she found a place before the tenancy would end.

The owner explained that they sympathized with the Tenant's medical conditions and acknowledged that the Tenant had made extensive efforts to find alternative accommodation. However, this was the reason why the Tenant had been given six months to vacate the rental unit and the owner was not willing to give the Tenant more time to find a place as she needed the rental unit for her son.

Analysis

I have examined the Notice and I find that the contents of the Notice on the approved form complied with Section 52 of the Act. I accept the undisputed evidence of the Landlord that the Notice was personally served to the Tenant in accordance with Section 88(a) of the Act on September 24, 2015.

Section 49(8) of the Act provides a tenant with 15 days to make an Application to dispute the Notice. Section 49(9) of the Act stipulates that if the tenant fails to dispute the Notice by making an Application within the 15 day time period, then they conclusively presumed to have accepted that the tenancy ends on the vacancy date of the notice and **must** vacate the rental unit by this date.

The Tenant has not disputed the Notice. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the vacancy date of the Notice, being March 31, 2016. As the vacancy date of the Notice has now passed and the Tenant is still occupying the rental suite, but has paid rent for May 2016, the Landlord is entitled to an Order of Possession effective on May 31, 2016.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 Application filing fee. As a result, I allow the Landlord to achieve this relief by deducting \$100.00 from the Tenant's security deposit pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant has breached the Act by not moving out of the rental suite in accordance with the vacancy date of the undisputed Notice. As a result, the Landlord is granted an Order of Possession effective **on May 31, 2016 at 1:00 p.m.** This order must be served to the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit. The Landlord is allowed to recover the filing fee from the Tenant's security deposit.

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: May 09, 2016

Residential Tenancy Branch