



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

This hearing dealt with the landlords' application for an order of possession for landlord's use pursuant to section 55 of the *Residential Tenancy Act* (the Act).

The tenants did not attend this hearing, although I waited until 1349 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord KC (the landlord) and the agent attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he served the tenants with the dispute resolution package in person on 5 May 2016. On the basis of this evidence, I am satisfied that the tenants were served with the dispute resolution package pursuant to section 89 of the Act.

The landlord testified that the landlords served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) on 18 March 2016 in person. The 2 Month Notice was initialed by both tenants. On the basis of this evidence, I am satisfied that the tenants were served with the 2 Month Notice pursuant to section 88 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for landlord's use?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began 1 December 2014. Monthly rent in the amount of \$1,000.00 is due on the first. The landlords collected a security deposit in the amount of \$500.00.

On 8 March 2016, the contract of purchase and sale was executed and was subject to conditions. Title to the rental unit transferred to the purchaser on or about 1 June 2016.

On 16 March 2016, the purchasers provided notice to the landlords of the purchasers' intent to occupy the rental unit. The landlord and agent testified that to the best of their knowledge it is the purchasers' intent to occupy the rental unit.

On 18 March 2016, the landlords served the 2 Month Notice to the tenants. The 2 Month Notice was dated 18 March 2016 and set out an effective date of 31 May 2016. The 2 Month Notice indicated that it was given as "all of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

On 7 April 2016, the tenants provided a signed statement indicating that they would vacate by 30 April 2016. The landlords paid the tenants \$1,000.00 in consideration of this early vacancy date.

The tenants did not vacate the rental unit on 30 April 2016 or 31 May 2016 and continue to occupy it. The landlord has not received compensation for the tenants' use and occupancy of the rental unit for May or June.

Analysis

Subsection 49(5) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where:

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. Subsection 49(9) states:

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.

The tenants received the 2 Month Notice on 18 March 2016. This means that the tenants had until 2 April 2016 to apply to this Branch to cancel the 2 Month Notice. The tenants did not apply for dispute resolution within fifteen days of receiving the 2 Month Notice. As such, the tenants were conclusively presumed to have accepted that the tenancy ended as of 31 May 2016. The letter from April does not indicate that the landlords have waived their right to seek possession under the 2 Month Notice. As such, the landlords are entitled to possession and their application for an order of possession is granted. As the tenants have not provided any payment towards their use and occupancy of the rental unit for June, I find that the landlords are entitled to a two-day order of possession.

Conclusion

The landlords are provided with a formal copy of an order of possession. 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 subsection 9.1(1) of the Act.

Dated: June 02, 2016

Residential Tenancy Branch