



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL OPM MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Landlord's Use or an Order of Possession as a result of a Mutual Agreement to End Tenancy pursuant to section 55; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidentiary materials. The landlord indicated that he relied on the residential tenancy agreement as a "mutual agreement to end the tenancy". This portion of his application is dismissed.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Landlord's Use of Property?
Is the landlord entitled to retain all or a portion of the tenant's security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy continues as of the date of this hearing. Details of the residential tenancy agreement were agreed upon and provided by both parties. The rental amount of \$1600.00 was payable on the first of each month. The landlord continues to hold a \$800.00 security deposit paid at the outset of this tenancy.

On February 29, 2016, the landlord posted a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") on the tenant's door. The 2 Month Notice requested

the tenant vacate the residence by May 1, 2016. The Notice provided the following reason for seeking an end to this tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...

The landlord's son testified that he currently resides in his father's (the landlord's) home. The landlord's son testified that, due to a variety of family circumstances, he advised his father that he would be moving out of the family home. He testified that he and his father came to an agreement that he would reside in the rental unit on the property.

The landlord's son also testified that he was involved in providing the notice to end tenancy to the tenant and discussing the notice with her. He testified that he spoke with the tenant on March 1, 2016 to provide her further details with respect to the 2 Month Notice, including the provision that the tenant was entitled to the equivalent of one month's rent in compensation.

The landlord and tenant both testified that the tenant had not paid rent for April 2016 and paid only ½ month's rent in June 2016.

The tenant submitted that the appropriate move-out date, based on the method of delivery of the 2 Month Notice, should be May 31, 2016. The tenant testified that she intended to move out on time but that she has a large family and it has been difficult to find an appropriate home. She also testified acknowledging the outstanding rent amount (1/2 month's rent) owed to the landlord. The tenant testified that she and her family have found a new residence for June 30, 2016 and hope to vacate the rental unit as soon as possible.

Analysis

The tenant did not make application pursuant to section 49(8) of the Act within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property in dispute of this 2 Month Notice. In accordance with section 49(9) of the Act, the tenant's failure to take this action within fifteen days led to the end of her tenancy on May 31, 2016 and required her to vacate the rental premises by that date. As that has not occurred, I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive an award for unpaid rent for June 15 – 30, 2016 as the tenant acknowledges she remains in the rental unit as of the date of this hearing and that she has not paid rent for all of June 2016. I accept the evidence of the

landlord and his son that his son will move in to the rental unit when it is vacated by the tenant. The landlord is entitled to an award in the amount of ½ a month's rent totalling 800.00.

The landlord testified that he continues to hold a security deposit of \$800.00 plus any interest from the outset of the tenancy to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit plus any interest in partial satisfaction of the monetary award. There is no interest payable for this period.

The landlord withdrew his application to recover the filing fee.

Conclusion

I grant the landlords an Order of Possession to be effective June 30, 2016. If the tenant does not vacate the rental unit by the date required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I allow the landlord to retain the tenant's \$800.00 security deposit in full satisfaction of the amount of rent outstanding.

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: June 17, 2016

Residential Tenancy Branch