



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL 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 pursuant to section 55; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:44 am in order to enable the tenant to connect with this teleconference hearing scheduled for 10:30 am. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord's representative testified that the tenant was personally served with a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") on May 6, 2016. The landlord's representative submitted a proof of service document completed and signed by the tenant, acknowledging receipt of the 2 Month Notice. I find that the tenant was duly served with the 2 Month Notice on May 6, 2016. The landlord's representative also testified that she sent the landlord's Application for Dispute Resolution (including Notice of Hearing) to the tenant by registered mail on May 30, 2016. The landlord's representative submitted a copy of the Canada Post receipt and tracking number for this mailing. I find the tenant was deemed served with the landlord's Application on June 4, 2016 (5 days after its registered mailing). I find that both the 2 Month Notice and the landlord's Application were served in accordance with the requirements of section 88, 89 and 90 of the Act.

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 tenant?

Background and Evidence

This month to month tenancy began prior to the current landlord's purchase of the residential premises. The tenant continues to reside in the rental unit with a monthly payable rental amount of \$850.00. The landlord's representative testified that the landlord continues to hold the tenant's deposits paid at the outset of this tenancy. The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reason for seeking an end to this tenancy:

All of the conditions for 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.

The landlord's representative testified that the landlord has sold his property and the new owner requires the rental unit to be vacant. The landlord's representative submitted a copy of the written request of the new owner "that you give the present tenant occupying the subject property a notice of termination of said tenancy....I/we confirm that my/our child, parent or my spouse will occupy the residential premises as a residence for not less than six (6) months after the possession date...". The landlord's representative testified with respect to the details of the sale and submitted as evidence a copy of the removal of the subject with respect to financing for this sale dated May 4, 2016 with a sale completion date of August 2, 2016.

The landlord's representative testified that she has been in contact with the tenant to advise her of rights with respect to a 2 Month Notice to End Tenancy for Landlord's Use, including the provision of the equivalent of 1 Month's rent. The tenant did not attend this hearing.

Analysis

Section 49 of the Act addresses the end of a tenancy for the landlord's use of the property. Section 49(5) address the grounds upon which the landlord relies.

49 (5) A landlord may end a tenancy in respect of a rental unit if

(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...

Pursuant to section 49(8), when a landlord issues a 2 Month Notice to End Tenancy for Landlord's Use, the tenant is entitled to file for dispute resolution to cancel the notice within 15 days of receiving the 2 Month Notice. Pursuant to section 49(9), If a tenant does not make such an application, the tenant is conclusively presumed to have accepted the terms of the notice to end tenancy including the effective date.

The tenant has not made application pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice. In accordance with section 49(9) of the *Act*, the tenant's failure to take this action within fifteen days results in the end of her tenancy on July 31, 2016. The tenant will be required to vacate the rental premises by that date. Therefore, the landlord is entitled to an Order of Possession dated July 31, 2016.

For the information of both parties, I provide the following information from the Act,

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

- (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
- (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The landlord is entitled to an Order of Possession dated July 31, 2016. As the landlord has been successful in this application, the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession effective July 31, 2016. Should the tenant(s) fail to comply with this formal Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is permitted to reduce the tenant's security deposit currently held with the landlord by \$100.00 in compensation for the filing fee for this Application.

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