



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAYDEN HOMES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNR, MNDC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made the company Landlord for an Order of Possession and a Monetary Order.

An agent for the company Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance or any submission of evidence from the Tenant for the eight minute duration of the hearing. Therefore, I turned my mind to the service of documents for this hearing by the Landlord.

The Landlord’s agent testified that the Tenant was served with notice of this hearing and a copy of the Application by registered mail on July 15, 2016. The Canada Post tracking number was provided into evidence to verify this method of service and it was sent to the rental unit. The Landlord’s agent testified that despite repeated attempts by Canada Post to affect delivery, the documents were returned to the Landlord as unclaimed.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence before me, I find that the Tenant was deemed served with the required documents on July 20, 2016 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord’s agent.

The Landlord’s agent confirmed at the start of the hearing that the Tenant was not in rental arrears and therefore withdrew the Application for a Monetary Order. The Landlord’s agent confirmed that the only matter to be decided upon in this hearing was the request for an Order of Possession because the tenancy had ended and the Tenant was over holding the tenancy.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord's agent testified that this tenancy started in January 2016 for a fixed term. Prior to the expiry of that fixed term, the parties entered into another fixed term agreement starting on May 1, 2016 for three months due to expire on July 31, 2016. The signed residential tenancy agreement was provided into evidence and shows that at the end of the fixed term the tenancy ends and the Tenant is required to vacate the rental unit; both parties initialed this provision of the residential tenancy agreement. Rent in the amount of \$1,800.00 was payable under the tenancy agreement on the first day of each month.

The Landlord's agent testified the Landlord had informed the Tenant prior to the ending of the fixed term tenancy that the tenancy agreement was not going to be renewed and that the Tenant was to vacate the rental unit pursuant to the terms of the tenancy agreement. However, the Tenant failed to comply with the tenancy agreement and continues to over hold the tenancy at the time of this hearing. The Landlord's agent explained that they had accepted rent from the Tenant for August 2016 but that the Tenant had been issued with a receipt detailing the rent was being accepted for use and occupancy only and was not being re-instated. As a result, the Landlord seeks an Order of Possession effective for the end of August 2016.

Analysis

Section 44 of the Act stipulates how a tenancy ends. In particular, Section 44 (1) (b) of the Act states that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

Based on the foregoing, I find that the tenancy agreement signed and dated on April 25, 2016 by the parties stipulated that the tenancy was to end on July 31, 2016 and the Tenant was required to move out on this date. I also find the Landlord did not re-instate the tenancy after this period as they accepted rent for use and occupancy only. The residential tenancy agreement signed by both parties clearly stipulates the end of tenancy date and requires the parties to initial this provision of the agreement in an effort to highlight to both parties the exact nature of the agreement being entered into.

Section 55(2) (c) of the Act states that a landlord may request an Order of Possession of rental unit if the tenancy agreement is a fixed term tenancy that provides the tenant will vacate the rental unit at the end of the fixed term.

Based on the foregoing, I find the Tenant has breached the written tenancy agreement by over holding the tenancy past July 31, 2016. Therefore, the Landlord is entitled to an Order of Possession. This order is effective on August 31, 2016 as the Tenant has paid rent up until this time period. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit. The Tenant may be held liable for the costs associated with enforcing the order.

Conclusion

The Tenant has breached the fixed term end date of the tenancy agreement. The Landlord is granted an Order of Possession effective for the end of August 2016. The Landlord withdrew the monetary claim.

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: August 29, 2016

Residential Tenancy Branch