



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Preliminary matter

At the start of the conference call the Occupants' Counsel said that there is no tenancy involving this property as the ownership of the property is in dispute in Supreme Court of British Columbia. As well Counsel said there is no tenancy agreement between the parties. Consequently the Residential Tenancy Act does not have jurisdiction in this situation.

Neither the Occupants nor their Counsel submitted any evidence to support the Occupants Counsel's claim that no tenancy exists.

In the Landlord's evidence the Landlord submitted a copy of the land title search for the property in her name and a copy of the tenancy agreement signed by all the parties named on the Landlord's application.

The Arbitrator accepted that a tenancy exists between the parties and that the Residential Tenancy Act has jurisdiction.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 16, 2016. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlord and the Tenants' Counsel in attendance.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on September 3, 2012 as a 5 year fixed term tenancy with an expiry date of September 3, 2017. Rent is \$750.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$375.00 at the start of the tenancy.

The Landlord said she issued a 1 Month Notice to End Tenancy for Cause dated June 13, 2016 by registered mail to the Tenants on June 17, 2016. The Notice to End Tenancy has an effective vacancy date of July 31, 2016 on it. The Landlord continued to say she issued the Notice because the Tenants will not let the realtor into the rental unit for property sale purposes. The Landlord continued to say the Tenants did not dispute the 1 Month Notice to End Tenancy for Cause; therefore the Tenants are deemed to have accepted the tenancy has ended. The Landlord said the Tenants have not moved out and she wants to end the tenancy as soon as possible.

The Tenants' Counsel said that the Residential Tenancy Act does not have jurisdiction in this situation as this matter is in front of the Supreme Court of British Columbia. The Tenants' Counsel continued to say that he did not submit any evidence to support this claim.

The Arbitrator advised the Tenants' Counsel that it is the responsibility of both Applicants and Respondents to be prepared and have any evidence submitted to the hearing prior to the hearing date.

The Counsel said he understood that but he was not able to submit the Supreme Court filing evidence as it was just filed.

The Arbitrator indicated that on the evidence submitted the Residential Tenancy Act has jurisdiction on this matter. Further if a tenant receives a 1 Month Notice to End Tenancy for Cause, a tenant has 10 days from the day of receiving that Notice to dispute the Notice to end Tenancy. If the tenant does not dispute the Notice to End Tenancy within the time limit of 10 days then a tenant is deemed to have accepted the Notice and the End of the Tenancy.

The Tenants' Counsel had no closing remarks.

The Landlord had no closing remarks.

Analysis

Section 47(4) of the Act states that **within 10 days of receiving** a Notice to End Tenancy for Cause, a Tenant may apply for dispute resolution. If the Tenant fails to do this, then under section 47(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy five days after it was sent by registered mail. The Landlord said the Notice to End Tenancy was sent by registered mail on June 17, 2016. The Landlord submitted a Canada Post receipt and tracking information to prove the service of the Notice to End Tenancy. The Tenants are deemed to have received the Notice to End Tenancy on June 22, 2016. Consequently, the Tenants would have had to apply to dispute the Notice by July 2, 2016. The Tenants did not apply to dispute the 1 Month Notice to End Tenancy for Cause dated June 13, 2016; therefore the Tenants are deemed to have accepted the Notice to End Tenancy.

I find that the Tenant has not applied for dispute resolution. Consequently, I find pursuant to s. 55 of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenants.

I also find that as the Landlord was successful in this matter he is entitled to recover the filing fee of \$100.00 for this proceeding from the Tenant. I order the Landlord to retain \$100.00 from the Tenants' security deposit as full payment of the filing fee for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenants has been issued to the Landlord. A copy of the Order must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia.

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