



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW WEST 727 HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

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 landlords use pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on July 19, 2016. The landlord has provided a copy of the Canada Post Customer Receipt Tracking number and a printout from the Canada Post Online Search showing that the package was received by Canada Post on July 19, 2016. The landlord stated that he was present at the rental unit and saw that the tenant had received the notice from Canada Post for the attempted service of the notice of hearing package. I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served and is deemed served as per section 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 a monetary order for recovery of the filing fee?

Background and Evidence

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

The landlord stated that the tenant was served with the 2 Month Notice dated April 29, 2016 by the previous landlord, R.B. The 2 Month Notice dated April 29, 2016 sets out an effective end of tenancy date of June 30, 2016 and one reason it was given as:

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

The landlord stated that a contract for sale was completed in which vacant possession was requested of the previous landlord.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, the new landlord/owner has provided undisputed affirmed testimony that a contract for sale was completed with the previous landlord in which vacant possession was a condition of the sale. A 2 Month Notice dated April 29, 2016 was issued by the previous landlord as noted above. The new landlord/owner was cautioned that the 2 Month Notice dated April 29, 2016 issued by the previous owner was for that owner/landlord's use of the property and not for the new landlord/owner. The new landlord/owner stated the rental unit was intended for use by one of the family members of the Holding Company. As such, the 2 Month Notice is invalid. The landlord's application is dismissed.

Conclusion

The landlord's application is dismissed.

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: September 07, 2016

Residential Tenancy Branch