



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

O, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an order of possession based on a mutual agreement ending tenancy and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on October 7, 2016 at 12:50 p.m. copies of the Application for Dispute Resolution and Notice of Hearing were handed to the tenant. Service occurred at the rental unit, with a witness present. The landlord submitted a proof of service document, signed by the witness.

Therefore, I find that the tenant was served on October 7, 2016.

The tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based on a mutual agreement to end tenancy?

Background and Evidence

The landlord said that this tenancy is a fixed term into 2017. On October 6, 2016 the parties signed a mutual agreement to end a tenancy; agreeing the tenancy will end effective 1:00 p.m. on October 31, 2016.

A copy of the mutual agreement signed by both the landlord and tenant was supplied as evidence. The landlord confirmed that the tenant signature belonged to the tenant.

The landlord said that the tenant has a roommate and the landlord is concerned that person will not vacate. It was explained that an order of possession requires a tenant and all occupants to vacate.

It was explained that the filing fee claim would not succeed as the hearing has been held prior to the date the tenant must vacate. The tenant and any occupants may well vacate, as agreed.

Analysis

Section 44 (1) of the Act provides:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];*
- (ii) section 46 [landlord's notice: non-payment of rent];*
- (iii) section 47 [landlord's notice: cause];*
- (iv) section 48 [landlord's notice: end of employment];*
- (v) section 49 [landlord's notice: landlord's use of property];*
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
- (vii) section 50 [tenant may end tenancy early];*

(b) 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;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(Emphasis added)

Therefore, as the parties have signed a mutual agreement to end a tenancy effective October 31, 2016 I find, pursuant to section 44(1)(c) of the Act that the tenancy will end on that date at 1:00 p.m.

Pursuant to section 55(2)(d) of the Act the landlord has been granted an order of possession that is effective at **1:00 p.m. on October 31, 2016**. This order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an order of that Court.

Filing fees are declined as the landlord has sought the order prior to the end date of the tenancy.

Conclusion

The landlord is entitled to an order of possession based on a mutual agreement.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 27, 2016

Residential Tenancy Branch