



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on the expiration of a fixed term tenancy agreement and to recover the filing fee.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement confirming that this 12 month fixed term tenancy began on November 1, 2015 and was to end on October 31, 2016. The agreement further provided that at the end of the tenancy the Tenant must move out of the rental unit. This boxed was initialed by the Tenant.

The Landlord testified that in July 2016 the Tenant applied for Dispute Resolution seeking an Order that the Landlord make repairs to the rental unit. The Landlord stated that at that time the Tenant was informed the Landlord did not intend to renew the tenancy. The file number for this previous application is noted on the unpublished cover page of this my Decision.

The Landlord further testified that on September 2, 2016 the Landlord sent a letter to the Tenant in which the Landlord informed the Tenant that the tenancy was to end at the end of October 31, 2016 as well providing move out cleaning instructions to the Tenant.

The Landlord testified that the Tenant then served the Landlord with another application (the file number is noted on the cover page of this Decision) in which the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use. Notably, the Landlord had not in fact issued such a notice such that the Tenant's request to cancel the Notice was not applicable. The Landlord testified that the hearing of the Tenant's application occurred on November 7, 2016 and, although she requested an Order of Possession at the hearing, her request was denied as the Landlord had not made an application for such relief.

The Tenant testified that he has not moved from the rental unit as he has not been able to find other accommodation. He confirmed that he has four children and has tried to find other rental accommodation but has been unsuccessful.

The Landlord confirmed that, provided the Tenant paid \$1,300.00 by January 1, 2017, she was agreeable to the Order of Possession being effective January 31, 2017. She further stated that she would accept the \$1,300.00 payment for use and occupancy only and that she was not reinstating the tenancy.

Analysis

Section 55 of the *Residential Tenancy Act* provides as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

The residential tenancy agreement introduced in evidence confirms that this tenancy was for a 12 month fixed term, ending on October 31, 2016, at which time the Tenant was to move from the rental unit.

I find, pursuant to section 55(2)(c), the Landlord is entitled to an Order of Possession based on the expiration of the fixed term.

I further find that the Landlord has not reinstated the tenancy by accepting payment for use and occupancy only for the months of November 2016 and December 2016.

The Landlord agreed to an Order of Possession effective January 31, 2017. Accordingly, I grant her this Order, effective 1:00 p.m. January 31, 2017. This Order must be served on the Tenant and may be filed and enforced in the B.C. Supreme Court.

The Tenant was cautioned that should he not move from the rental unit by 1:00 p.m. on January 31, 2017, the Landlord may obtain a Writ of Possession and the assistance of a Bailiff, the cost of which may be recoverable from the Tenant.

Having been successful, I also award the Landlord recovery of the \$100.00 filing fee. The Landlord is granted a Monetary Order for this amount. The Landlord must serve the Monetary Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The parties entered into a fixed term tenancy agreement which was to end on October 31, 2016. Pursuant to the agreement the Tenant was to vacate the rental unit.

The Landlord is entitled to an Order of Possession pursuant to section 55(2)(c). The Landlord agreed to the effective date being January 31, 2017 and accordingly I make the Order effective at 1:00 p.m. on that date.

The Landlord is also entitled to a Monetary Order in the amount of \$100.00 representing recovery of the filing fee.

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: December 21, 2016

Residential Tenancy Branch