



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPL, FF

Introduction

The landlord has applied requesting an order of possession based on a two month Notice to end tenancy for landlords' use of the property issued on July 31, 2016 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on a one month Notice to end tenancy for landlords' use of the property?

Background and Evidence

The parties agreed that rent is due on the first day of each month.

The landlord submitted a proof of service document setting out personal delivery of a one month Notice to end tenancy for landlords' use of the property on July 31, 2016 at 12:00 noon. The tenant confirmed the Notice was received on that date.

The Notice provided the reason:

"The rental unit will be occupied by the landlord or the landlords' close family member (parent, spouse or child; or the parent or child of that individuals' spouse.)"

The Notice indicated that the tenant had the right to dispute the Notice within 15 days after receipt of the Notice. The Notice also informed the tenant that if an application was not filed to dispute the Notice within 15 days the tenant would be presumed to have

accepted the tenancy is ending and that the tenant must move out of the rental unit by the effective date on the Notice. The Notice had an effective date of October 30, 2016.

The tenant did not dispute the Notice. The tenants' daughter said that her mothers' command of the English language is not very good and that she did not understand the Notice. The daughter stated that the tenant has been seeking a rental unit but that finding a suitable home close to the school is very difficult.

The landlord said his son and his fiancé are moving into the unit.

The landlord agreed to accept vacant possession at the end of December 2016. The tenant has yet to receive compensation equivalent to one month's rent. The landlord has not been paid December 2016 rent. The landlord said the tenant could withhold December 2016 rent as compensation due, pursuant to section 51(1) of the Act.

Analysis

I find that on July 31, 2016 the tenant received a two month Notice ending tenancy for landlords' use of the property. The tenant has confirmed receipt.

Section 53 of the Act provides, in part:

53 (1) *If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.*

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Therefore, I find that the effective date of the Notice was October 31, 2016; the last day of that month.

Section 49(9) of the Act provides:

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

A failure to understand rights and obligations under the legislation does not provide a party an avenue for avoiding those rights and obligations. The tenant received the Notice and did not dispute the Notice.

As the tenant failed to dispute the Notice I find, pursuant to section 49(9) of the Act that the tenant is conclusively presumed to have accepted the tenancy has ended effective October 31, 2016. The landlord quickly informed the tenant, by serving Notice of this hearing that the landlord intended to end the tenancy.

Therefore, I find, pursuant to section 55(2) of the Act that the landlord is entitled to an order of possession. The landlord has been granted an order of possession that is effective, by agreement, at **1:00 p.m. on December 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.

The landlord has agreed the tenant will not pay December 2016 rent, as provision of the required compensation.

As the application has merit I find pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenant. I grant the landlord a monetary order. In the event that the tenant does not comply with this order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court. The landlord is entitled to deduct the value of the filing fee from any security deposit that is held in trust.

Conclusion

The landlord is entitled to an order of possession.

The landlord is entitled to filing fee costs.

This decision is final and binding 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: December 07, 2016

Residential Tenancy Branch