



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL

Introduction

The Application for Dispute Resolution filed by the landlord seeks an Order for Possession for landlord use of the property.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on October 20, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was personally served on the Tenant on November 6, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issue to be decided is whether the landlord is entitled to an Order for Possession?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on March 3, 2014. The present rent is \$520 per month payable in advance on the first day of each month. The Tenant paid a security deposit of \$250 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

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

Analysis:

The tenant failed to file an Application for Dispute Resolution to dispute the 2 month Notice to End Tenancy. She testified she was down the Service BC center and gave them her financial information. However, she was not able to produce a copy of an Application for Dispute Resolution which she has filed. The landlord testified he has never received a copy of an Application for Dispute Resolution filed by the Tenant. Section 49(9) of the Residential Tenancy Act provides as follows:

- 49(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.

I determined the landlord is entitled to an Order for Possession based on the failure of the Tenant to dispute the Notice.

However, I determined it was appropriate to consider the landlord's claim on its merits. The landlord seeks to end the tenancy based on the following evidence:

- He wishes to have his son move in as soon as possible.
- The landlord works out of town and it has been difficult to manage the rental property as he is not there on a regular basis. It is intend that the landlords' son will take over the management of the rental 4-plex including the collection of rent and general maintenance. The son is temporarily living at a friend's house.
- The son will also take steps to renovate unit 3 which requires new plumbing, new kitchen and an upgrade to the electrical wiring.
- Unit 1 is has been recently renovated and is the best unit for monitoring people walking to enter the courtyard and other units. In the past year there have been two police complaints about tenants in the rental property.

The tenant testified as follows:

- She is 68 years of age and has been a good tenant always paying her rent on time.
- She has asked the landlord to make repairs and he has failed to do so.
- The landlord's son could live in unit #3.

- She does not feel it is fair that she is evicted when there are two other tenants who moved into the rental property after she arrived (5 months ago).

I determined the landlord is entitled to an Order for Possession on the merits. The law permits a landlord to terminate a tenancy where the landlord in “good faith” intends the rental unit will be occupied by a close family member. A son qualifies as a close family member. I determined the landlord is acting in good faith and does not have a ulterior motive. There is good reason why he might want his son to take over the management of the rental property. Further, I determined the 2 month Notice to End Tenancy is a valid notice. I determined the landlord has sufficient grounds to end the tenancy.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant(s) failed to make an Application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Further, I determined the landlord has established sufficient grounds to end the tenancy on the merits and would have been successful even if the Tenant had filed an Application. Accordingly, I granted the landlord an Order for Possession. Given the time of the year, the age of Tenant and the difficulty in obtaining other accommodation I set the effective date of the Order for Possession for January 31, 2017.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

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